

Public Works / Finance Committee



Regular Meeting ~Agenda~

Laurie M. Hopkins
City Clerk

www.ci.moscow.id.us

208.883.7015

**Monday
May 22, 2023**

4:00 PM

**Council Chambers
206 E. Third St.**

The Moscow Mayor, City Council and Staff welcome you to today's meeting. We appreciate and encourage public participation. For regular agenda items, an opportunity for public comment is sometimes provided after the staff report. However, the formality of procedures varies with the purpose and subject of the agenda item and limitations may be placed on the time allowed for comments. If you plan to address the Committee, you will find a list of "Tips for Addressing the Council" in the door pocket outside the City Council Chambers. Please note that Committee meetings are televised, videotaped and/or recorded. Links to view the Committee meeting live can be found on the City website, YouTube, Facebook and Spectrum Cable 1301. Thank you for your interest in City government.

REGULAR AGENDA

1. **Approval of Public Works/Finance Committee May 8, 2023 Minutes (ACTION ITEM) - Taylor Riedner**
2. **Public Meeting: Proposed Lot Division located directly south of Highway 8 at the terminus of Harrison Street (ACTION ITEM) – Aimee Hennrich**

The applicants, Tim and Laurie Chamberlain, are requesting a lot division to create two lots of approximately 21,440 sf and 22,500 sf in size from an existing parcel of 43,940 sf in size. The subject property is located directly south of Highway 8 at the terminus of Harrison Street, and the intention of the lot division is to create one additional lot. Both of the proposed lots are currently vacant, and have most recently been used for RV storage and garden shed sales. The subject property is located within the Motor Business (MB) Zoning District which has no minimum lot size or lot width requirements. However, all lots must abut a public street right of way for a minimum of 40 feet. Both of the proposed lots meet this requirement. Property owners within 600 feet of the property have been notified of the proposed division and a sign was posted seven (7) days prior to the public meeting date.

PROPOSED ACTIONS: Recommend approval of the lot division request with no conditions; or recommend approval of the lot division request with conditions; or recommend denial of the lot division request; or provide staff further direction.

3. **Latah County and Cities Disposal Agreements (ACTION ITEM) - Tim Davis**

Existing Disposal Agreements between the City of Moscow and Latah County, Cities of Bovill, Deary, Juliaetta, Kendrick, Genesee, Potlatch, and Troy are due to expire on September 30, 2023. The City of Moscow has managed and operated a solid waste, recycling processing and disposal system and has offered to provide these services to these municipalities since 1993, when the MSW landfill closed and waste began being shipped to Columbia Ridge Landfill, in Arlington, Oregon and currently Finley Buttes Landfill, in Boardman, Oregon. Latah County and the other cities above, wish to continue these services with the City of Moscow. The new disposal agreements are very similar to the existing agreements, with the exception of the fuel cost relief granted to Finley Buttes Partnership in 2022, for transport and disposal of MSW. The City of Moscow conducted a Sanitation Rate Study in 2021 to determine costs of solid waste processing and disposal services and necessary annual adjustments.

PROPOSED ACTIONS: Approve Disposal Agreements with Latah County, cities of Bovill, Deary, Juliaetta, Kendrick, Genesee, Potlatch, and Troy or give staff further direction.

4. Health Insurance Program Amendment Proposal (ACTION ITEM) - Bill Belknap

The City of Moscow provides three different health insurance plans for employees to choose from, including the base Preferred Provider Organization (PPO) plan with a \$1,500 individual \$3,000 family deductible, a \$300/\$600 deductible PPO plan where the employee is required to pay the premium cost over the base plan cost, as well as a High Deductible Health Plan (HDHP) with a Health Savings Account (HSA). For many years, the City has paid 50% of the health insurance premiums for dependents that are covered under the City's health insurance program. The City funds 100% of the employee's premium and 50% of their dependent's premium. Recently it has become clear that the City's cost of health insurance for dependents is significantly higher than many of our neighboring entities. The cost of dependent care under the City of Moscow's benefits program is over three times as expensive when compared to the average of CDA, Post Falls, Lewiston, and Pullman. On average, an employee with the City of Moscow will pay \$575 more per month, or \$6,900 more per year, than the average of the comparison cities. Staff is recommending increasing the dependent premium coverage from 50% to 55% for the upcoming plan year beginning in August of this year. If the City increased dependent care coverage to 55%, City employees with dependents would see an average savings of \$12.38 per month, or a maximum savings of \$23.31 per month for a full family compared to their current insurance premiums. Staff would further recommend committing to reducing this disparity as funding allows, in an incremental manner over the next five years, to bring the City into parity within our labor market and peers.

PROPOSED ACTIONS: Recommend approval to increase dependent care to 55% for the upcoming 2024 health insurance plan year; or provide staff further direction.

ADJOURN

NOTICE: It is the policy of the City of Moscow that all City-sponsored public meetings and events are accessible to all people. If you need assistance in participating in this meeting or event due to a disability under the ADA, please contact the City's ADA Coordinator by phone at (208) 883-7600, TDD (208) 883-7019, or by email at adacoordinator@ci.moscow.id.us at least 48 hours prior to the scheduled meeting or event to request an accommodation. The City of Moscow is committed to ensuring that all reasonable accommodation requests are fulfilled.

Public Works / Finance Committee



Regular Meeting ~Minutes~

Laurie M. Hopkins
City Clerk

www.ci.moscow.id.us

208.883.7015

**Monday
May 8, 2023**

4:00 PM

**Council Chambers
206 E. Third St.**

The meeting was called to order at 4:00 p.m.

PRESENT: Maureen Laflin, Gina Taruscio, Drew Davis

OTHERS: Mayor Art Bettge

STAFF: Bill Belknap, Cody Riddle, Sarah Banks, Amanda Argona, Mia Bautista, Taylor Riedner

REGULAR AGENDA

1. Approval of Public Works/Finance Committee April 10, 2023 Minutes (ACTION ITEM) - Taylor Riedner

The minutes were approved as presented.

2. Disbursement Report April 2023 (ACTION ITEM) - Sarah Banks

Presentation of the Accounts Payable Report for the month ending April, 2023.

ACTION: Approve and authorize the use of digital signatures to sign the Disbursements Report for the month of April 2023.

Banks introduced the item by highlighting major expenditures including a chassis progress payment for the new fire engine, Hurber Screen rebuild purchase, 5th Booster Station phase 2 payment, 6th Street Bridge improvement payment. Banks noted that revenue report in General Fund Intergovernmental shows a large negative value due to transferring ARPA funds to Water. Needing no further discussion, the Committee recommended approval and that it be placed on the Council consent agenda.

3. Camp Moscowanna Alcohol Use Request in Entertainment District (ACTION ITEM) - Amanda Argona

The Moscow Chamber of Commerce + Visitor Center is hosting Camp Moscowanna on Saturday, June 10th, from 4 pm to 8 pm on Main Street between 3rd and 6th Streets. This summer camp-themed event is designed to evoke the nostalgia of family-friendly gatherings and features: corn-hole, a children's fishing hole, sing-a-long log, relay events, s'mores station, yarn art, photo booth, live music, up to ten local food vendors, and up to ten beer/wine vendors. The event has been reviewed and approved by staff as of April 13, 2023. Following standard operating procedures for events with alcohol that are within the Entertainment District boundaries, Camp Moscowanna is requesting a temporary suspension of the open container law by resolution. Per Moscow City Code, Section 10-1-12, a draft resolution has been prepared for the Council's consideration.

PROPOSED ACTIONS: Recommend approval of the resolution allowing for the temporary suspension of the open container law within the event footprint of Camp Moscowanna for the duration of the event; or provide staff with further direction.

Argona introduced the item as written above and explained the applicant has up to 10 days prior to the event to finalize the vendor layout. The event applicant coordinates locations with the vendors and the

check in station will be under the old US Bank. The Committee recommended approval and that it be placed on the Council consent agenda.

4. Ordinance Amending Moscow City Code Title 4 Appeal Procedures (ACTION ITEM) - Cody Riddle

Staff is proposing an amendment to Moscow City Code to consolidate and clarify the procedural requirements associated with appeals. This includes a repeal of Title 4, Chapter 10, Section 10-8 (Procedures for the Appeals of Interpretation or Administration), and amendments to the following:

- Title 4, Chapter 5, Section 5-6.D (Variance and Appeal Procedures)
- Title 4, Chapter 8, Section 8-2 (Appeals of Zoning Administrator Decisions)
- Title 4, Chapter 8, Section 8-5 (Appeals to City Council)
- Title 4, Chapter 8 (Table of Contents)

PROPOSED ACTIONS: Recommend forwarding the proposed amendment to the Planning and Zoning Commission for public hearing, or provide staff with further direction.

Riddle introduced the item as written above and reviewed details of the proposed amendments from the meeting packet. The main goal of the proposed amendments is to provide a clearer process of appeals and to consolidate the information. This process began with City Council repealing a Resolution from 2000 on May 1, 2023. With Committee approval, the proposed amendments will go to the Planning and Zoning Commission for a public hearing then brought back to City Council for final approval. Needing no further discussion, the Committee recommended approval and that it be placed on the Council regular agenda.

5. Idaho Public Television Tower Lease Agreement (ACTION ITEM) - Bill Belknap

The City is currently working toward the replacement of the City's emergency communications radio system due to the current equipment reaching end-of-life as well as system coverage deficiencies. One component of that project will include the installation of additional radio antennas and equipment on the radio tower located on Paradise Ridge which is owned by the State of Idaho and operated by Idaho Public Television (IPTV). Staff worked with IPTV to prepare a lease agreement to allow the installation of the new equipment planned for installation with the new radio system. The Lease Agreement is now before the Council for review and approval.

PROPOSED ACTIONS: Recommend approval of the proposed lease agreement; or provide staff further direction.

Belknap introduced the item by reflecting on the previous Committee meeting that reviewed a lease agreement with Bennett Lumber. This agreement is between the City of Moscow, IPTV and the State of Idaho. IPTV's current agreement with the State of Idaho runs through 2029 which at that point the City's agreement would be renewed. Compensation includes \$650 per year which is substantially less than the Bennett lease of approximately \$3,000 per year. The City is working to collect all the necessary property rights and lease agreements now as the radio project is getting ready to go out to bid in the near future. The Committee recommended approval and that it be placed on the Council consent agenda.

ADJOURN

The meeting adjourned at 4:15 p.m.

COMMITTEE / CITY COUNCIL STAFF REPORT

DATE: Monday, May 22, 2023



AGENDA ITEM TITLE

Public Meeting: Proposed Lot Division located directly south of Highway 8 at the terminus of Harrison Street (ACTION ITEM) – Aimee Hennrich

RESPONSIBLE STAFF

Aimee Hennrich, Planner I

ADDITIONAL PRESENTER(S)

DESCRIPTION

The applicants, Tim and Laurie Chamberlain, are requesting a lot division to create two lots of approximately 21,440 sf and 22,500 sf in size from an existing parcel of 43,940 sf in size. The subject property is located directly south of Highway 8 at the terminus of Harrison Street, and the intention of the lot division is to create one additional lot. Both of the proposed lots are currently vacant, and have most recently been used for RV storage and garden shed sales. The subject property is located within the Motor Business (MB) Zoning District which has no minimum lot size or lot width requirements. However, all lots must abut a public street right of way for a minimum of 40 feet. Both of the proposed lots meet this requirement. Property owners within 600 feet of the property have been notified of the proposed division and a sign was posted seven (7) days prior to the public meeting date.

REVIEWED BY

PROPOSED ACTIONS

PROPOSED ACTIONS: Recommend approval of the lot division request with no conditions; or recommend approval of the lot division request with conditions; or recommend denial of the lot division request; or provide staff further direction.

STAFF RECOMMENDATION

Recommend approval of the lot division request with no conditions.

OTHER RESOURCES

FISCAL IMPACT

PERSONNEL IMPACT

ATTACHMENTS

1. NPM LUP2023-0005 - Hwy 8 and Logan LD - PWF 05-22-23
2. Applicant Letter
3. Existing Lot
4. Exhibit
5. Parcel 1 Legal
6. Parcel 2 Legal

NOTICE OF PUBLIC MEETING

Proposed Lot Division of a 43,940 Square Foot Parcel Located Directly South of Highway 8 at the Terminus of Harrison Street and Logan Street within the City of Moscow as Shown on the Vicinity Map Below. Permit Application LUP2023-0005

A public meeting before the Public Works/Finance Committee of the City Council will be conducted during which the following proposal will be considered:

Proposed lot division to create two lots of approximately 21,440 square feet and 22,500 square feet in size from the existing 43,940 square foot parcel. The intent is to separate the lot into two parcels for individual sale.

MEETING DATE:

Monday, May 22, 2023

LOCATION OF MEETING:

Council Chambers, Second Floor, Moscow City Hall
206 East Third Street, Moscow, Idaho

MEETING TIME:

4:00 p.m.

Note: Meeting start time is not necessarily indicative of the start time for the proposal advertised in this notice. Multiple hearings and/or agenda items may make it difficult to determine the start time, which could occur late in the meeting.

The file containing information on this matter is available for public review at the Community Development Department located in the Haddock Building at 504 S Washington Street, Moscow, Idaho. Call 883-7035 for a meeting agenda and further information about the matter. You may obtain further information about the public hearing process and procedures on the City Website at: <https://www.ci.moscow.id.us/593/Public-Hearing-Notices>



Laurie M. Hopkins
Moscow City Clerk


Jennifer Fleischman
Deputy City Clerk

Publish: May 6, 2023

Mayor Art Bettge and the Moscow City Council
 Via Aimee Hennrich, Planner I
 Haddock Building, 504 S. Washington St.
 Moscow, ID 83843

March 14, 2023

Mayor Bettge and Council members,

We are writing to request a lot division of our property on SH8/Logan/Harrison Streets. We are the current owners of Moscow RV. We lease the building commonly known as 1303 S. Logan Street and own the 1.01 acres or approximately 43,995 Square Feet (SF) to the South which we purchased from the railroad. Historically we have used this lot to park RV's, sheds, and other items throughout the years. It is zoned Motor Business.

Our intent is to split this lot into two pieces. The Westerly portion would be 21,495 SF and the Eastern will be 22,500 SF. We have employed the services of Mike Dahlin at Rimrock Surveying to create legal descriptions of this property and to draw the exact property line. We have approximated square footages and the property line for these as shown based on GIS software. If the surveyor determines the line needs to move to create the 2,500 SF on the Eastern parcel it will pivot from the North end from the shared corner with Ery and swing East/West as necessary to create exactly 22,500 SF on the Eastern parcel. The Western parcel will be whatever the remaining amount of square footage is as determined by the surveyor, again we estimate this to be 21,495 SF.

The Eastern parcel will be accessed by the curb cut for Logan Street on the S side of SH 8 and the Western parcel will be served by access from Harrison Street and an alley coming from SH8. We have negotiated an easement for signage and utilities with Charlotte Ery who owns the building at 1303 S. Logan (see exhibit). Our site drainage is through a gentle gradient sloping toward Paradise creek. There is a small portion of our property which is in the floodplain as per the most recent FEMA mapping.

We are working with Charlotte Ery and the intent is to convey the Eastern lot with the property she owns at 1303 S. Logan St. By doing so, all parcels will have legal and physical access for traffic, city and franchise utilities. We are asking for approval of the lot division for the two parcels to be split subject to the legal descriptions and exhibit to be provided by the surveyor.

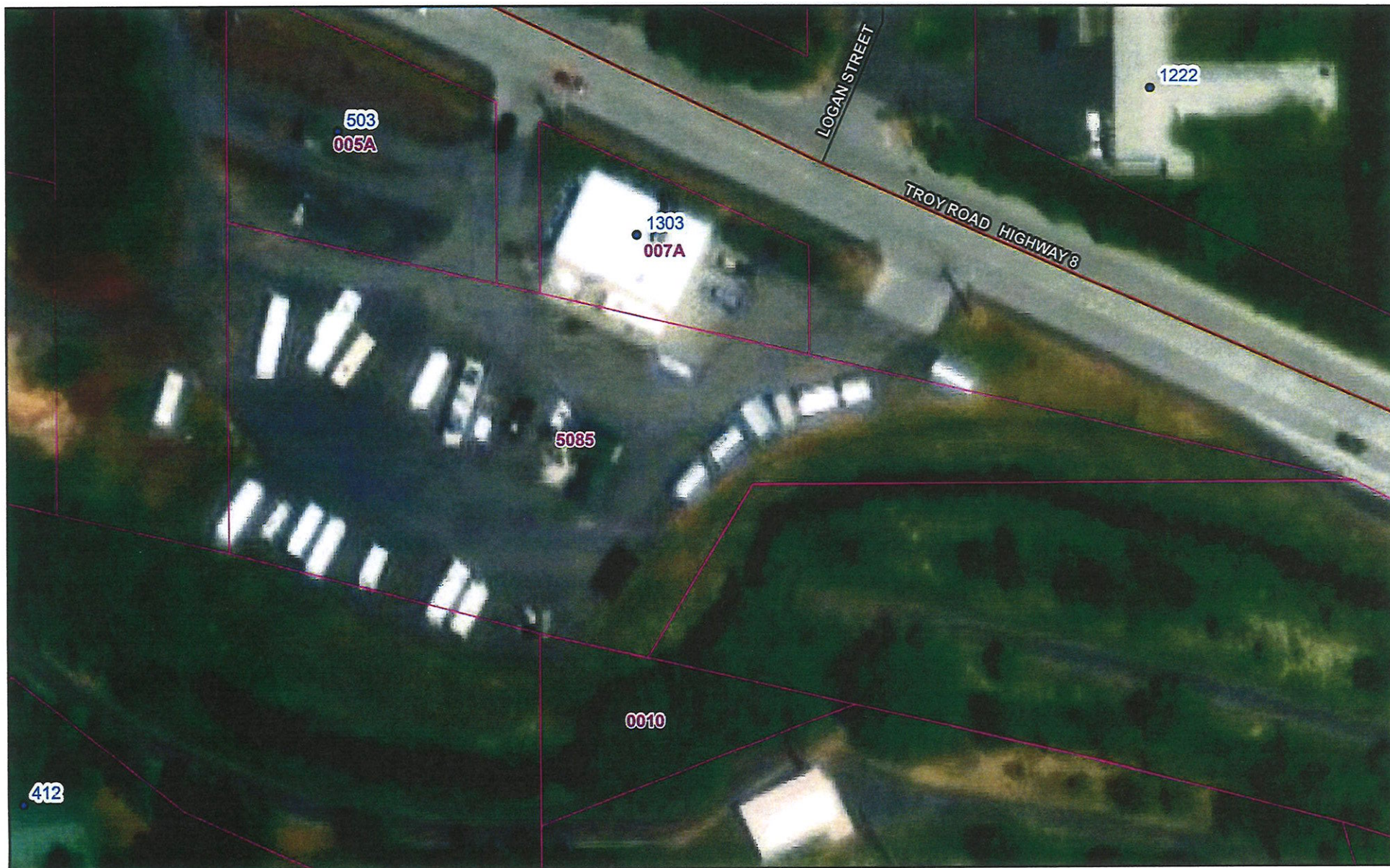
Thank you for your consideration and your service to our community.

Regards,



Tim and Laurie Chamberlain

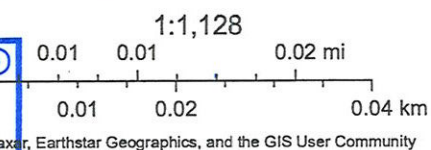
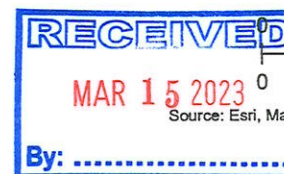




March 14, 2023

- Cadastral Data - Townships
- Cadastral Data - Sections
- Address Points
- Moscow
- Parcel Boundaries

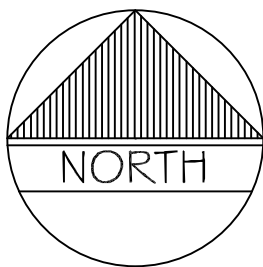
- Surface Transportation
- CITY
- STATE HIGHWAY



T 39 N, R 5 W, S 17

RECORD OF SURVEY

A Land Division Located in the E1/2 of the
W1/2 of Section 17, T39N, R5W,
Boise Meridian, City of Moscow,
Latah County, Idaho



ORIGINAL SCALE : 1" = 60 FEET
CADD FILE : Panhandle Homes LLC ROS.dwg

LEGEND

- Set 5/8" X 30" long rebar w/ aluminum cap LS 17534
- Found 5/8" rebar and cap LS 6449 or as described
- Calculated Position - Nothing Found or Set
- ✦ Found Section or 1/4 Section Corner
- ✦ Found Sectional Subdivision Corner
- (M) Measured
- (R) Record Per Survey References
- Subject Property Boundary Line
- Section Line
- Section Subdivision Line
- Highway Centerline
- Highway or Railroad Right of Way Line
- Sunny-Side Addition Lot Line
- Easement Line
- Existing Building

BASIS OF BEARINGS

The Basis of Bearings for this survey is the Idaho Coordinate System, West Zone, NAD 83, as shown between the found west quarter corner and the found center quarter of Section 17, said bearing being S 89°19'32" E.

SURVEY REFERENCES

- Quitclaim Deed Inst. No. 493024
- Warranty Deed Inst. No. 288571
- Quitclaim Deed Inst. No. 448061
- Sunny-Side Addition to Moscow, Book 2 of Plats, Page 24, 1891
- Record of Survey Inst. No. 498451, PL5 6449, 2005
- ITD State Highway 8 FAP No. 5TP-7744 (103), 2008
- Permanent Public Utility Easement Inst. No. 529812

SURVEYOR CERTIFICATION

This map correctly represents a survey made by me or under my direction in conformance with the Survey Recording Act. This survey map was prepared at the request of Panhandle Homes LLC, in April, 2023.

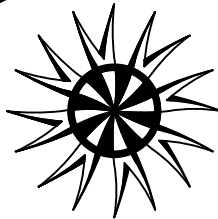
PRELIMINARY
NOT FOR RECORDING

Michael E. Dahlin - Idaho Professional Land Surveyor



COUNTY RECORDER CERTIFICATE

STATE OF IDAHO, COUNTY OF LATAH
RECORDED AT THE REQUEST OF _____
AT _____ THIS _____ DAY OF _____
RECORDER _____
DEPUTY _____



RIM ROCK CONSULTING, INC.

- Land Surveying
- Site Planning
- Mapping

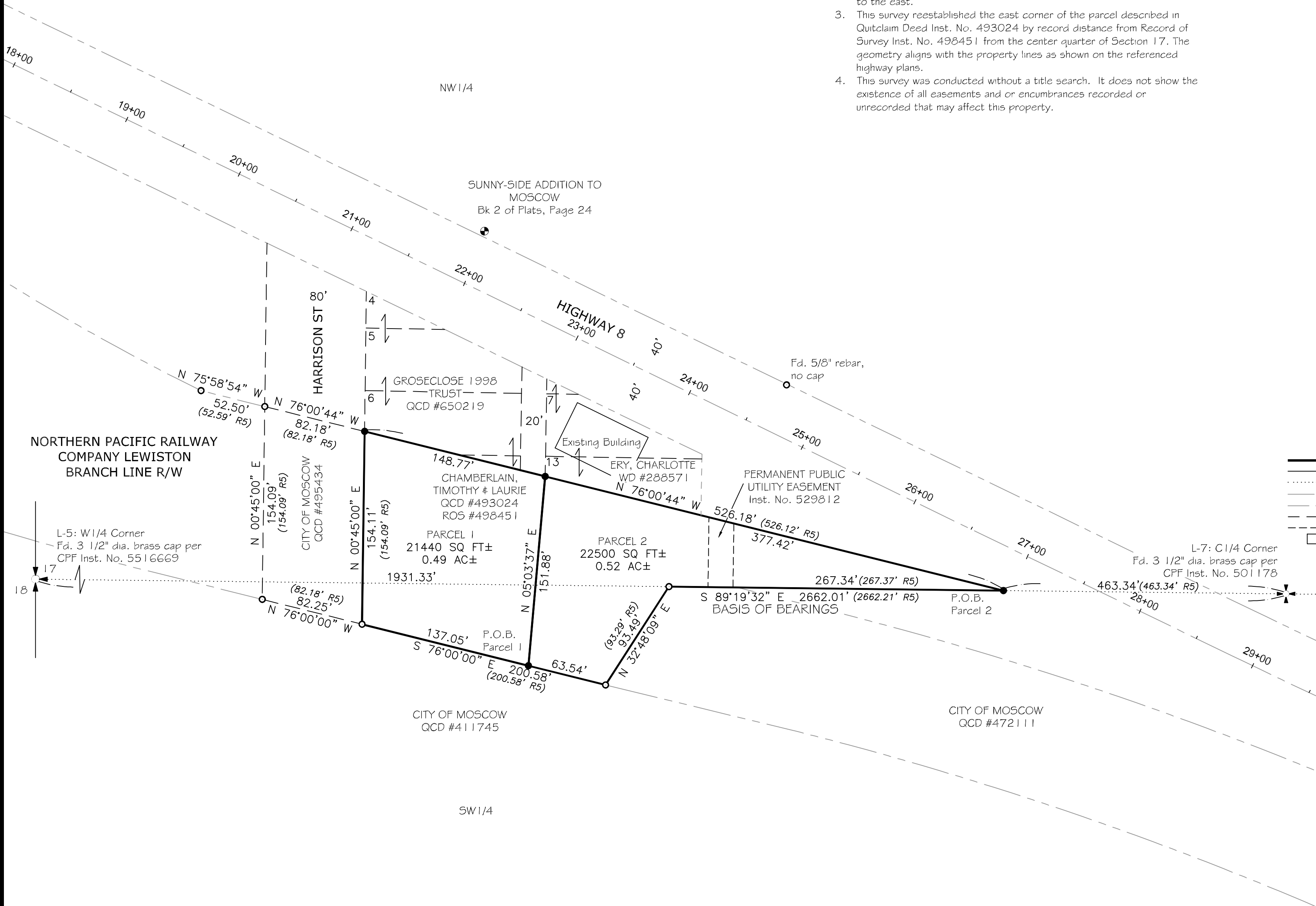
129 West 3rd Street #102 Moscow, Idaho 83843 208-883-5339 rimrock@rimrockconsulting.net

SHEET

1
OF
1

SURVEYOR NARRATIVE

- The purpose of this survey is to locate and monument a land division of the parcel describe in Quitclaim Deed Inst. No. 493024.
- Highway 8 was located using the Highway 8 FAP No. 5TP-7744 (103) plans and the physical location of travel. One rebar with no cap and no known record was located on the northerly right of way, however, no highway monuments were found. The southerly right of way line stops along the east line of Block 19 of Sunny-Side Addition and is ambiguous to the east.
- This survey reestablished the east corner of the parcel described in Quitclaim Deed Inst. No. 493024 by record distance from Record of Survey Inst. No. 498451 from the center quarter of Section 17. The geometry aligns with the property lines as shown on the referenced highway plans.
- This survey was conducted without a title search. It does not show the existence of all easements and or encumbrances recorded or unrecorded that may affect this property.



DATE	STATE	COUNTY	PROJECT	DRAWN BY
APRIL 2023	ID	LATAH	PANHANDLE HOMES	TLW



Rim Rock Consulting, Inc.

PROFESSIONAL LAND SURVEYORS
GIS & MAPPING SERVICES

JOHN L. DUNN, PLS / ID, WA / CFEDS
DUANE E. PRIEST, PLS / ID
MICHAEL E. DAHLIN, PLS / ID, WA

PROPERTY DESCRIPTION FOR PANHANDLE HOMES LLC PARCEL 1

A parcel of land located in the E 1/2 of the W 1/2 of Section 17, Township 39 North, Range 5 West of the Boise Meridian, City of Moscow, Latah County, Idaho, lying within the railroad right of way commonly known as the Northern Pacific Railway Company (NPRR) Lewiston Branch line right of way, and further described as follows:

COMMENCING at the center quarter corner of Section 17, from which the west quarter of said section bears N 89°19'32" W, 2662.01 feet; Thence along the south line of the northwest quarter of said section, N 89°19'32" W, 730.68 feet; Thence leaving said south line, S 32°48'09" W, 93.49 feet to the southwesterly line of the NPRR right of way; Thence along said right of way, N 76°00'00" W, 63.54 feet to the POINT OF BEGINNING;

Thence continuing along said right of way, N 76°00'00" W, 137.05 feet to a point on the east line of Harrison Street;

Thence along the east line thereof, N 00°45'00" E, 154.11 feet to a point on the north line of the parcel described in Quitclaim Deed Inst. No. 493024;

Thence leaving said east line and along said north line, S 76°00'44" E, 148.77 feet;

Thence leaving said north line, S 05°03'37" W, 151.88 feet to the POINT OF BEGINNING.

Containing 21,440 sq ft more or less.

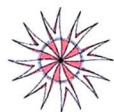
This description was prepared by Michael E. Dahlin on April 11, 2023.

This description was revised by Michael E. Dahlin on April 19, 2023.

PRELIMINARY

129 West 3rd Street, #102 • Moscow, ID 83843
(208) 883-5339 phone • (208) 883-4309 fax
rimrock@rimrockconsulting.net





Rim Rock Consulting, Inc.

PROFESSIONAL LAND SURVEYORS
GIS & MAPPING SERVICES

JOHN L. DUNN, PLS / ID, WA / CFEDS
DUANE E. PRIEST, PLS / ID
MICHAEL E. DAHLIN, PLS / ID, WA

PROPERTY DESCRIPTION FOR PANHANDLE HOMES LLC PARCEL 2

A parcel of land located in the E 1/2 of the W 1/2 of Section 17, Township 39 North, Range 5 West of the Boise Meridian, City of Moscow, Latah County, Idaho, lying within the railroad right of way commonly known as the Northern Pacific Railway Company (NPRR) Lewiston Branch line right of way, and further described as follows:

COMMENCING at the center quarter corner of Section 17, from which the west quarter of said section bears N 89°19'32" W, 2662.01 feet; Thence along the south line of the northwest quarter of said section, N 89°19'32" W, 463.34 feet to the POINT OF BEGINNING;

Thence continuing along said south line, N 89°19'32" W, 267.34 feet;
Thence leaving said south line, S 32°48'09" W, 93.49 feet to the southwesterly line of the NPRR right of way;
Thence along said right of way, N 76°00'00" W, 63.54 feet;
Thence leaving said right of way, N 05°03'37" E, 151.88 feet to a point on the north line of the deed described in Quitclaim Deed Inst. No. 493024;
Thence along said north line, S 76°00'44" E, 377.42 feet to the POINT OF BEGINNING.

Containing 22,500 sq ft more or less.

This description was prepared by Michael E. Dahlin on April 11, 2023.

PRELIMINARY

129 West 3rd Street, #102 • Moscow, ID 83843
(208) 883-5339 phone • (208) 883-4309 fax
rimrock@rimrockconsulting.net



COMMITTEE / CITY COUNCIL STAFF REPORT

DATE: Monday, May 22, 2023



AGENDA ITEM TITLE

Latah County and Cities Disposal Agreements (ACTION ITEM)- Tim Davis

RESPONSIBLE STAFF

Tim Davis, Sanitation Operations Manager

ADDITIONAL PRESENTER(S)

DESCRIPTION

Existing Disposal Agreements between the City of Moscow and Latah County, Cities of Bovill, Deary, Juliaetta, Kendrick, Genesee, Potlatch, and Troy are due to expire on September 30, 2023. The City of Moscow has managed and operated a solid waste, recycling processing and disposal system and has offered to provide these services to these municipalities since 1993, when the MSW landfill closed and waste began being shipped to Columbia Ridge Landfill, in Arlington, Oregon and currently Finley Buttes Landfill, in Boardman, Oregon. Latah County and the other cities above, wish to continue these services with the City of Moscow. The new disposal agreements are very similar to the existing agreements, with the exception of the fuel cost relief granted to Finley Buttes Partnership in 2022, for transport and disposal of MSW. The City of Moscow conducted a Sanitation Rate Study in 2021 to determine costs of solid waste processing and disposal services and necessary annual adjustments.

REVIEWED BY

PROPOSED ACTIONS

PROPOSED ACTIONS: Approve Disposal Agreements with Latah County, cities of Bovill, Deary, Juliaetta, Kendrick, Genesee, Potlatch, and Troy or give staff further direction.

STAFF RECOMMENDATION

Approve Disposal Agreements with Latah County, cities of Bovill, Deary, Juliaetta, Kendrick, Genesee, Potlatch, and Troy.

OTHER RESOURCES

FISCAL IMPACT

PERSONNEL IMPACT

ATTACHMENTS

1. LATAH COUNTY SolidWasteDisposal - 2023_Final
2. GENESSE Solid Waste Disposal Agreement DRAFT
3. TROY Solid Waste Disposal Agreement DRAFT
4. KENDRICK Solid Waste Disposal Agreement DRAFT
5. DEARY Solid Waste Disposal Agreement DRAFT

6. POTLATCH Solid Waste Disposal Agreement DRAFT
7. BOVILL Solid Waste Disposal Agreement DRAFT_aj_mb (002) TP Review_aj
8. JULIAETTA Solid Waste Disposal Agreement DRAFT (003)

**SOLID WASTE DISPOSAL AGREEMENT
BETWEEN LATAH COUNTY AND
CITY OF MOSCOW, IDAHO**

THIS SOLID WASTE DISPOSAL AGREEMENT BETWEEN LATAH COUNTY AND CITY OF MOSCOW, IDAHO (hereinafter "Agreement"), made and entered into this ____ day of _____, 2023, by and between Latah County, a political subdivision of the State of Idaho, 522 South Adams, Moscow, Idaho, 83843 (hereinafter "COUNTY"), and the City of Moscow, Idaho, a municipal corporation of the State of Idaho, 206 East Third Street, Moscow, Idaho, 83843 (hereinafter "CITY").

W I T N E S S E T H:

WHEREAS, CITY manages and operates a solid waste and recycling processing and disposal system in Latah County; and

WHEREAS, CITY has offered to provide COUNTY with solid waste and recycling services and related programs in accordance with Federal, State of Idaho, and local statutes, laws, rules, regulations, and ordinances as defined herein; and

WHEREAS, COUNTY finds that CITY is qualified and capable to provide such services to COUNTY; and

WHEREAS, CITY and COUNTY have an existing solid waste disposal agreement that was executed on February 16, 2017, and which expires on September 30, 2023; and

WHEREAS, COUNTY wishes for CITY to continue to provide COUNTY with solid waste processing and disposal and recycling processing services; and

WHEREAS, in 2021, CITY conducted a Sanitation Rate Study to determine the cost of solid waste processing and disposal services and necessary annual adjustments; and

WHEREAS, in 2022, CITY amended its agreement with Finley-Buttes Limited Partnership (CITY's municipal solid waste (MSW) transport and disposal contractor) to provide fuel cost relief through a fuel adjustment formula as set forth in Exhibit "B" attached hereto and incorporated herein;

THEREFORE, CITY and COUNTY hereby enter into an Agreement for disposal and/or recycling of Acceptable Waste, Demolition/Inert Waste, Compostable Waste, and recyclable materials received from residences, businesses, institutions, and industries within Rural Latah COUNTY and for programs related thereto, and for and in consideration of the promises and covenants contained herein, CITY hereby agrees to and with COUNTY to undertake and execute, for an agreed upon consideration, the herein described work, in a good, substantial and workmanlike manner.

I. DEFINITIONS

For purposes of interpretation of the terms of this Agreement, the following terms, phrases, and derivations shall have the following meanings. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The term "shall" is always mandatory and not merely directory.

- A. **ACCEPTABLE WASTE.** That portion of solid waste that is normally disposed of and originating from residential dwellings, businesses, industrial and commercial establishments which consists of household wastes from private residences, commercial waste which originates in wholesale, retail or service establishments such as restaurants, stores, markets, theaters, hotels warehouses, and institutional waste material originating in schools, hospitals, research institutions and public buildings. Such Acceptable Waste shall include tires, metals, and white goods. In no event shall Acceptable Waste include any Hazardous Waste, Infectious Waste, or any Unacceptable Waste.
- B. **COLLECTION FRANCHISEE.** The person, persons, corporation, or partnership holding a contract and/or franchise issued or granted by COUNTY authorizing such person, persons, corporation or partnership to operate, conduct or maintain a solid waste collection and disposal system upon or over any highways, streets, roads, alleys and public ways of COUNTY.
- C. **COLLECTION UNIT.** A Rural Latah COUNTY resident and/or business receiving solid waste collection services at a place of residence or place of business located within Rural Latah COUNTY.
 - 1. **Individual Unit:** A dwelling within Rural Latah COUNTY occupied by a person or group of persons. An individual unit shall be deemed occupied when either occupied or generating solid waste. Each unit within an apartment building, condominium, duplex, or mobile home park shall be treated as an individual residential unit unless served by a mechanical container or compactor.
 - 2. **Commercial Unit:** Each space within Rural Latah COUNTY occupied by an individual business. A business shall be deemed occupied when either occupied or generating solid waste.
- D. **COMPOSTABLE WASTE.** That Acceptable Waste that has been accepted at the Designated Waste Processing Facility for composting. Such Compostable Waste shall conform to all statutes, rules, and regulations of any governmental regulatory agency which pertains to composting.
- E. **DEMOLITION/INERT WASTE.** That Acceptable Waste that has been accepted at the Designated Waste Processing Facility for placement in the demolition/inert landfill. Such Demolition/Inert Waste shall conform to all statutes, rules, and regulations of any governmental regulatory agency which pertains to demolition/inert landfilling.
- F. **DESIGNATED WASTE PROCESSING FACILITY.** The facility or site designated by CITY where Acceptable Waste is compacted, incinerated, landfilled, composted, transferred, or otherwise disposed of or treated prior to disposal.
- G. **DIRECTOR OF SOLID WASTE SERVICES.** The Moscow City Supervisor or such other person or persons so designated by the Moscow City Supervisor.
- H. **HAZARDOUS WASTE.** Any chemical, compound, mixture, substance, or article which is designated by federal law or regulation, Idaho law or regulation or the law or regulation of

any other state when applicable (such as in the case of solid waste exported to or through another state for ultimate disposal) to be 'hazardous', 'dangerous', or 'extremely dangerous'. Hazardous Waste includes any material or substance which, by reason of its composition or characteristics, is:

1. Toxic or hazardous waste as defined in either the Solid Waste Disposal Act, 42 U.S.C. Section 6901 *et seq.*, as replaced, amended, expanded, or supplemented, or any laws of similar purpose or effect, and such policies or regulations thereunder, or under relevant state law as replaced, amended, expanded, or supplemented, or any laws of similar purpose or effect, and any rules, regulations, or policies thereunder, or
 2. Special nuclear or by-products material within the meaning of the Atomic Energy Act of 1954, 42 U.S.C. Section 2011 *et seq.*, as replaced, amended, expanded or supplemented, or any laws of similar purpose or effect, and such policies or regulations thereunder, or under relevant state law as replaced, amended, expanded or supplemented, or any laws of similar purpose or effect, and any rules, regulations or policies thereunder; or
 3. Other material which any governmental agency or unit having appropriate jurisdiction shall determine from time to time is harmful, toxic, or dangerous or otherwise ineligible for transfer through, transportation by, or disposal from the site; or
 4. Any material which would result in residue being designated as hazardous waste under the above; or
 5. Any waste falling within the definition contained in Idaho Code § 39-4403 (8).
- I. **HOUSEHOLD SOLID WASTE.** That Acceptable Waste, including garbage or trash produced by ordinary residential units, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas, which fits into a bag, manual container or bundle less than four feet (4') in length. Does not include bulky, Infectious Waste, Hazardous Waste, Unacceptable Waste, or any type of solid waste that is not normally collected by COUNTY's collection Franchisee at individual or commercial units.
- J. **INFECTIOUS WASTE.** Any material, chemical, compound, mixture, substance, or article known to be infectious by the generator or producer or which is designated by the United States Environmental Protection Agency or other appropriate agency of the Federal Government or the State of Idaho to be "infectious" as that term is commonly defined by or pursuant to law.
- K. **PRODUCER.** Any person, business or other entity which produces solid waste within Rural Latah COUNTY.
- L. **PUTRESCIBLE WASTE.** Solid waste which has the capacity to become rotten or foul.
- M. **RATE MODIFICATION DATE.** The date whereby all rate adjustments shall become effective. The rate modification date shall be October 1 of each year this Agreement is in force.
- N. **RESOURCE RECOVERY.** The process, including recycling, of obtaining useful material or energy resources from solid waste.
- O. **RURAL LATAH COUNTY.** All land lying within the boundaries of Latah COUNTY, Idaho, exclusive of the limits of any incorporated city, town or village contained therein, except for the

land included within the corporate boundaries of Onaway, which shall be included, and exclusive of Sections 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21 and 30, TWP 42N, Range 5W and Sections 1, 12, 13, 24, 25, 36. TWP 42N, Range 6W and TWP 43N and 44N, Range 5W and TWP 43N and 44N Range 6W Boise Meridian.

- P. **TRANSFER STATION.** The transfer, processing and transportation facility which has been designated by CITY for the purpose of transferring, processing and/or transporting Transport Waste.
- Q. **TRANSPORT WASTE.** That Acceptable Solid Waste which has been accepted at the Designated Waste Processing Facility for loading into transport vehicles for transport to an Ultimate Disposal Site. Such Transport Waste shall conform to the rules of, and be acceptable to, the Ultimate Disposal Site.
- R. **ULTIMATE DISPOSAL SITE.** Any disposal site chosen by CITY which may ultimately receive Transport Waste from the Designated Waste Processing Facility.
- S. **UNACCEPTABLE WASTE.** That portion of the solid waste such as, but not limited to, explosives, pathological and biological waste, Infectious Waste, Hazardous Waste (except as deemed subject to the Household Hazardous Waste Program as defined in this Agreement), radioactive materials, foundry sand, cesspool waste, human remains, industrial process wastes, motor vehicles (including major motor vehicle parts such as transmissions, rear ends, springs and fenders), agricultural and farm machinery and equipment, marine vessels and major parts thereof or any other large type of machinery or equipment, or that which in the reasonable judgment of the Director may present a substantial endangerment to health or safety, or has a reasonable possibility of adversely affecting the operation of the Designated Waste Processing Facility or the acceptance of Transport Waste by the Ultimate Disposal Site.
- T. **WHITE GOODS.** Appliances such as refrigerators, ranges, water heaters, freezers, unit air conditioners, washing machines, dishwashers, clothes dryers, and other similar domestic and commercial large appliances.

II. SCOPE OF WORK

- A. **SERVICE.** CITY shall furnish, manage and maintain a system of processing, transportation, and disposal and/or recycling of Acceptable Waste as described herein. CITY shall further provide access to CITY's Designated Waste Processing Facility, Recycling Center, Household Hazardous Waste Program, and Solid Waste Education Program to the residents of Rural Latah COUNTY as provided herein. These services shall include all supervision, materials, equipment, labor, and all other items necessary to satisfy the terms of this Agreement.
- B. **ACCEPTANCE OF ACCEPTABLE WASTE.** CITY shall accept all Acceptable Waste delivered to its Designated Waste Processing Facility by COUNTY's Collection Franchisee and/or by individual residents of Rural Latah COUNTY, provided all tipping fees associated with such acceptance are paid. CITY shall provide for the processing of said Acceptable Waste, including landfilling, composting, recycling and/or hauling of said Acceptable Waste (Transport Waste) to the Ultimate Disposal Site.

- C. **ACCEPTANCE OF RECYCLABLE MATERIALS.** CITY shall accept, process, and provide for ultimate disposal of certain recyclable materials delivered to the CITY's Recycling Center by COUNTY's Collection Franchisee or the individual residents of Rural Latah COUNTY, provided all tipping fees associated with such acceptance are paid. The types of materials to be accepted at CITY Recycling Center, the amount of money to be paid, if any, for recyclable materials and the types of recyclable materials upon which such money will be paid shall be the sole decision of CITY. Provided, that COUNTY's Collection Franchisee, other person authorized by COUNTY to operate a recycling collection business, or any other person operating a recycling collection business shall not be paid for recyclable materials collected and/or delivered to CITY's Recycling Center. Provided further, that COUNTY and/or residents of Rural Latah COUNTY may arrange for the processing of such recyclable materials through any other public or private entity.
- D. **HOUSEHOLD HAZARDOUS WASTE PROGRAM.** CITY shall provide access to CITY's Household Hazardous Waste Collection Facility to all residents of Rural Latah COUNTY. The types of materials to be accepted pursuant to such Household Hazardous Waste Collection program and the operation of such program shall be the sole decision of CITY, upon consultation with COUNTY.
- E. **SOLID WASTE EDUCATION PROGRAM.** CITY shall include Rural Latah COUNTY in any and all solid waste education programs established by CITY and shall consult with COUNTY with regard to the content, frequency, and methods used in said education programs.
- F. **INFECTIOUS WASTE AND POTENTIALLY HARMFUL WASTES.**
1. CITY may provide, but is not obligated to provide, disposal programs for Infectious Waste or potentially harmful wastes. In the event that CITY elects to provide such program(s), CITY shall handle such Infectious Waste and potentially harmful wastes in a manner consistent with all applicable regulations.
 2. Producers of such wastes shall arrange with CITY, at Producers own expense, for the disposal of such wastes and the charges therefor, and the costs of disposing of such wastes shall be set by CITY.
- G. **UNACCEPTABLE WASTE.** COUNTY shall not permit its Collection Franchisee or any other person to place Unacceptable Waste into a collection vehicle or container. COUNTY shall implement a program of training and procedure which is designed to prevent the placing of Unacceptable Waste into collection vehicles or containers. In the event that COUNTY's Collection Franchisee or any other person delivers unacceptable waste to the Designated Waste Processing Facility, CITY shall, at CITY's sole option, either:
1. Dispose of such Unacceptable Waste in a legally proper manner, and shall charge COUNTY for all costs thereof, plus actual reasonable administrative charges not to exceed fifteen percent (15%) of such costs; or
 2. Reject such Unacceptable Waste.

III. DESIGNATION OF ULTIMATE DISPOSAL SITE(S)

The Parties understand and agree that CITY shall have the sole and exclusive right to designate the location or locations to which solid waste will be transported for processing and ultimate disposal.

Provided that CITY shall consult with COUNTY and seek input regarding the designation of said ultimate disposal site and shall in good faith consider such COUNTY input.

IV. HOLIDAYS

The following shall be holidays for purpose of this Agreement:

New Year's Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Day

CITY may decide to observe any or all of the above listed holidays by suspension of disposal or recycling services on a holiday, but such decision in no manner relieves CITY of its obligation to provide such services on the next regularly scheduled service day.

V. COMPLAINTS

All complaints regarding CITY's performance of this Agreement shall be made through COUNTY to the Director of Solid Waste Services and shall be given prompt and courteous attention. Complaints made directly to CITY from producers in Rural Latah COUNTY shall be given prompt and courteous attention. CITY shall investigate and respond to such complaints and shall inform COUNTY in a timely manner of the nature of such complaints and any remedial action taken in response to such complaints.

VI. NOTIFICATION

COUNTY shall notify all producers to be served hereunder about complaint procedures, rates, fees, regulations, schedules, and changes in the operation of the disposal and or/recycling system by means of press releases and/or publication of pamphlets and/or other means as elected by COUNTY, and through at least one (1) annual mailing per year. The cost of such notification shall be the responsibility of COUNTY.

VII. POINT OF CONTACT

All notices between CITY and COUNTY shall be directed by CITY to the Latah COUNTY Commissioners, P O Box 8068, Moscow, Idaho, 83843, and by COUNTY to CITY via the Director of Solid Waste Services, at P O Box 9203, Moscow, Idaho, 83843.

VIII. SALVAGE RIGHTS

CITY shall have the full and exclusive right to all salvageable materials when such materials are accepted at the Designated Waste Processing Facility or Recycling Center pursuant to this Agreement, and CITY shall have the sole right to any and all funds received from the sale of said salvageable materials. Salvaging or scavenging by COUNTY, its Collection Franchisee(s), or any of their

employees or agents after delivery to said Solid Waste Processing facility or Recycling Center is prohibited.

IX. INSURANCE

- A. CITY shall at all times during the term of this Agreement, maintain, or cause its franchisees to maintain in full force and effect Employer's Liability, Workmen's Compensation, Public Liability and Property Damage insurance, including contractual liability coverage. Additionally, at all times during the term of this Agreement, COUNTY shall obtain and maintain, or cause its Collection Franchisee to obtain and maintain in full force and effect, public liability insurance and property damage insurance, including contractual liability coverage in the amounts of one million dollars (\$1,000,000.00) per occurrence, and two million dollars (\$2,000,000.00) aggregate. All insurance shall be provided before commencement of work hereunder. CITY and COUNTY shall annually furnish the other with certificates of insurance or other evidence satisfactory to the other that such insurance has been procured and is in force. Said certificates shall contain the following express provisions:

"This is to certify that the policies of insurance described herein have been issued to the insured for whom this certificate is executed and are in force at this time. In the event of cancellation or material change in a policy affecting the certificate holder, thirty (30) days prior written notice of said cancellation or change shall be provided to the certificate holder."

- B. For purposes of this Agreement, CITY shall carry, and/or shall cause its franchisee(s) or agents to carry, the following types of insurance in at least the limits specified below:

<u>COVERAGE</u>	<u>LIMITS OF LIABILITY</u>
Workmen's Compensation	Statutory
Employer's Liability	\$1,000,000
General Liability	\$1,000,000
except automobile (bodily injury and/or property damage)	each occurrence/ \$2,000,000 aggregate
Automobile bodily injury and/or property damage liability, combined single limit	\$1,000,000 each occurrence

All coverage is subject to policy conditions.

- C. As an alternative to the above, CITY may, with express written permission of COUNTY, provide the above public liability and property coverage under a plan of self-insurance. Each insurance policy with respect to public liability insurance may provide for self-insured retention of an amount of two hundred and fifty thousand dollars (\$250,000.00) with the result that CITY is its own insurer to that extent and with the requirement that CITY provides COUNTY with such evidence of financial responsibility as deemed necessary by COUNTY.

X. INTERRUPTION OF SERVICE

- A. Interruption of service shall mean that period of time during which services to be provided by CITY pursuant to this Agreement are interrupted, discontinued or substantially reduced, except as excused hereunder, for a period of five (5) consecutive days exclusive of Sundays and Holidays as defined herein; or after the expiration of five (5) days after notice, in accordance with the procedures required herein, is provided to CITY by COUNTY that COUNTY is terminating this Agreement because of a breach or default on the part of CITY and until such time as other arrangements can be made by COUNTY for other such services.
- B. COUNTY shall have the right to contract with another person, entity, or corporation to provide the services set forth herein in the event of an interruption of service by CITY, for the duration of such interruption of service. In the event of interruption of service, all payments to CITY shall be suspended. During the period of such interruption of service, CITY shall be liable to COUNTY for the reasonable costs of providing such services less the amount of payment COUNTY would have been liable to make to CITY for providing such services. COUNTY shall document the actual reasonable costs of providing such services during such interruption of service. CITY shall not be liable for costs which are not supported by such documentation.
- C. In the event that such interruption of service continues for a period of thirty (30) consecutive days, after the expiration of the 30th day, either COUNTY or CITY may terminate this Agreement. Termination shall be effective not less than one hundred fifty (150) days after service of the notice of termination upon the non-terminating Party. In the event of such termination by CITY, the liability of CITY to COUNTY shall be limited to the reasonable increased costs (documented as provided herein) of providing such services during such interruption of service prior to such termination.

XI. BASIS AND METHOD OF PAYMENT

- A. REIMBURSEMENT. COUNTY shall pay CITY in accordance herewith the amounts set forth in Exhibit "A" for each service. COUNTY shall also reimburse CITY for any fuel surcharges incurred on behalf of COUNTY in accordance with the fuel adjustment agreement between CITY and Finley-Buttes Limited Partnership attached hereto as Exhibit "B". COUNTY's pro rata share of any fuel surcharge shall be calculated by dividing COUNTY's tonnage processed within the billing period by the total tonnage processed within the billing period. Should CITY receive a credit in accordance with the fuel adjustment agreement, CITY shall calculate and provide COUNTY with credit in the same manner. The rates specified shall include all costs, fees, and other expenses of CITY associated with the performance of its obligations hereunder, including those costs, if any, associated with (a) tipping fees at the Designated Waste Processing Facility; (b) transport to the Ultimate Disposal Site; (c) disposal fees at the Ultimate Disposal Site; and (d) program area costs as shown at Exhibit "A".
- B. MODIFICATION OF RATES.
 - 1. Annual Rate Adjustment. The rates for services provided under this agreement shall be escalated annually by one point five percent (1.5%) effective upon October 1 of each year of the initial term as shown in Exhibit "A". Rates beyond the initial five (5) year term shall be determined through future sanitation rate studies and shall be adjusted prior to the commencement of any future term extension.

2. CITY's Request.

a. CITY shall have the right to petition COUNTY at any time for additional fee adjustments on the basis of unusual changes in the cost of operations i.e., revised federal and state of Idaho laws affecting this Agreement which require mandatory compliance by the CITY resulting in increased operating costs to CITY, (as proven by full documentation of such increased operating costs as requested by COUNTY). All such requests shall be fully developed setting forth the changes requested, existing costs, summary of estimated change in costs and the amount of fee change requested. COUNTY shall respond to such requests within thirty (30) days. If the Parties are unable to reach agreement on a proposed rate adjustment, either Party may invoke the provisions of paragraph B(4), below.

b. COUNTY understands that the cost of CITY's operations and services to be provided hereunder are subject to certain agreements (i.e., a Franchise Agreement and Hauling and Disposal Agreement). COUNTY has had the opportunity to review and analyze such agreements. CITY shall have the right to petition for a fee adjustment from COUNTY, and COUNTY shall be obligated to grant such fee adjustment, when such adjustment is made by CITY in response to a fee adjustment required by CITY's contractors pursuant to such agreements. All such requests shall be fully developed setting forth the changes requested, existing costs, summary of estimated change in costs and the amount of fee change requested. COUNTY shall respond to such requests within thirty (30) days. All fee adjustments made pursuant to this Section 11.B.2.b. shall be limited to COUNTY's pro-rata share of the actual fee adjustment(s) required of CITY.

3. COUNTY's Request. COUNTY may petition CITY for a change in either the level or nature of the service provided, and the resulting proposed fee adjustment. The notice shall include a listing by COUNTY of the type or nature of documentation, analysis, or audit it is relying upon in support of the proposed change. Within sixty (60) days following receipt of such a request, unless some other time period is mutually agreed to by the Parties, CITY shall notify COUNTY as to whether it agrees with the modification of level and/or nature of service and/or the fee adjustment. Nothing herein shall be construed as to require CITY to consent to such change in the nature and/or level of service. In the event CITY does not agree with COUNTY's fee adjustment, it shall also provide COUNTY with copies of all documentation, analysis or audit, on which CITY relies with CITY's written response. If CITY agrees with the fee adjustment, such adjustment will become effective upon COUNTY giving written notice to CITY to implement the change in the level and/or nature of service. In the event that COUNTY does not implement such changes in the nature and/or level of service (after CITY has agreed to such changes), COUNTY shall reimburse CITY for its costs, plus actual reasonable administrative charges not to exceed fifteen percent (15%) of such costs, incurred in responding to COUNTY's request for such adjustment. It is further acknowledged that this paragraph shall not operate so as to terminate the material provisions and intent of this Agreement; that is, CITY shall provide the solid waste disposal services set forth herein to COUNTY during the term of this Agreement while deciding on COUNTY's petition for change.

4. Arbitration of Disputes. In the event that the Parties cannot agree upon compensation for the work to be performed, the Parties agree that such a dispute shall be subject to binding arbitration pursuant to the rules of the Uniform Arbitration Act. The Parties shall mutually select a disinterested, non-local arbitrator. In the event the Parties are unable to mutually agree, each Party shall designate a disinterested, non-local individual and these two (2) designees shall then select the arbitrator. All designations of arbitrator or designee shall occur within ten (10) days of

notice of dispute being delivered by one (1) Party to the other, and designees shall select the arbitrator within ten (10) days of their designation. The decision of the arbitrator shall be binding on both Parties. The non-prevailing Party, as determined by the arbitrator, shall pay all costs of the arbitration and the prevailing Party shall be awarded its reasonable costs and reasonable attorney fees incurred in participating in such arbitration, said costs and attorney fees shall be limited to the amount of ten thousand dollars (\$10,000.00).

5. Effective Date. The fee adjustments contemplated in subparagraphs (2) and (3) above, shall become effective on the date(s) that the changes in service commence, or on the date such contractual rates change.

6. Emergency Services. Should additional services be required in an emergency, above and beyond those contemplated in this Agreement, COUNTY may order reasonable delivery of services and COUNTY shall pay the verifiable costs of such services, plus actual reasonable administrative charges not to exceed fifteen percent (15%) of such costs.

- C. PAYMENT. CITY shall be responsible for billing COUNTY monthly for the services set forth herein. COUNTY shall remit payment to CITY by the 20th day of each month following receipt of CITY's billing. In the event that COUNTY fails to remit payment to CITY by the 20th day of each month for such billing, COUNTY shall pay to CITY, in addition to the amount of the billing, a late fee in the amount of one percent (1%) of the amount of the billing per day beyond the due date. In addition to this late fee, in the event that COUNTY fails to remit payment to CITY within fourteen (14) days from the due date, CITY may, in its discretion, without penalty or determination that COUNTY is in breach of this Agreement, suspend its obligations and services to be provided hereunder until such charges are paid.

XII. TITLE TO WASTE

Title to all Acceptable Waste accepted at CITY's Designated Waste Processing Facility or Recycling Center, shall pass to CITY when so accepted. Title to Hazardous Wastes, potentially harmful wastes, Infectious Wastes or other Unacceptable Waste shall not vest with CITY, but shall remain with the Producer. COUNTY further agrees that it shall have the responsibility to identify the Producer of such wastes.

XIII. WAIVER

The failure of COUNTY or CITY to insist on strict performance of any of the terms and conditions hereof shall not be deemed a waiver of the rights or remedies that COUNTY or CITY may have regarding that specific instance, and shall not be deemed a waiver of any subsequent breach or default in any of the terms and conditions hereof. Making or receiving payments pursuant to this Agreement during the existence of a dispute shall not be deemed to and shall not constitute a waiver of any of the claims or defenses of the Party making such payment.

XIV. ADHERENCE TO LAWS

CITY and COUNTY shall at all times comply with and adhere to applicable laws governing the performance of the services described herein. Non-compliance with applicable statutes, rules and regulations by CITY or COUNTY shall act as a breach of this Agreement and shall subject the non-

complying Party to liability therefore. CITY and COUNTY shall report violations of such laws as soon as practicable.

XV. RECORDS AND INSPECTION

A. RECORDS

CITY shall maintain such records as may be specified herein or may be necessary to document the quantity of solid waste accepted and processed in the performance of this Agreement separately from that solid waste received by CITY pursuant to any other agreement with any governmental entity, business or person and to document the time and date of performance of services hereunder. Actual scale records shall be utilized in determining the quantity of solid waste collected and transported hereunder unless the Parties hereafter agree to the use of a system of estimation. Such actual scale weights shall be obtained utilizing the scales maintained at the Designated Waste Processing Facility. CITY shall make all documents relating to the performance of work hereunder, including scale records, available to COUNTY within fourteen (14) working days of receiving written notice detailing the documents requested. This time period may be extended where extenuating circumstances exist. Should COUNTY desire that records be maintained other than as provided above, COUNTY may petition CITY to cause such records to be maintained, and CITY, in its sole discretion, may cause such records to be maintained, provided that the cost of maintaining such records shall be borne by COUNTY. Further the Parties agree that CITY shall provide COUNTY, with each monthly billing, the following information as to the solid waste received and processed hereunder during the preceding month:

1. Tonnage of Acceptable Waste received broken down into categories of:
 - a. Transport Waste;
 - b. Inert/Demolition/Compost Waste;
 - c. Recyclable materials received from COUNTY's collection franchisee.
2. The number of White Goods accepted at the Designated Waste Processing Facility, including the names and addresses of the Producers of such White Goods. Provided that any additional cost to CITY incurred in providing such information shall be borne by COUNTY.

B. INSPECTION

COUNTY reserves the right to conduct on-site inspections of CITY's operations (including, without limitation, the actual weighing of solid waste) without notice and at reasonable times and in a reasonable manner. The costs of such inspections, including any increase in CITY's cost of operations as a result of accommodating such inspections shall be borne by COUNTY. CITY shall furnish COUNTY with all requested information relating to such work, provided the costs of providing such information shall be borne by COUNTY.

XVI. JURISDICTION AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho, and venue shall be in the District Court of Latah County.

XVII. BINDING ON SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors and permitted assigns.

XVIII. DELAYS IN CARRYING OUT WORK

CITY shall not be held responsible by reason of any delay in the performance of this Agreement when such delay is primarily caused by some act of God, provided that in the case of delay caused by an act of God, CITY shall give notice to COUNTY (in writing, at the earliest possible time) of the causes of such delay. Such a delay shall not be considered to be an interruption of service as designated in Section X of this Agreement. Provided, that if such delay due to an act of God continues for a period of twenty (20) consecutive days, either Party may terminate this Agreement without liability to the other Party. Such termination shall be effective upon written notice provided to the other Party.

XIX. HOLD HARMLESS/INDEMNIFICATION

- A. The Parties are governmental entities subject to statutory and constitutional restrictions concerning the acceptance of liability. The Parties liabilities are further governed by the Idaho Tort Claims Act. It is the intention of the Parties that each will be responsible for its own acts and omissions and those of its officers and employees acting within the course and scope of their employment.
- B. Further, the Parties understand that the Idaho Tort Claims Act, Idaho Code § 6-903(2)(ii), states that each Party's liability is secondary to the obligation of an insurer or indemnitor, or other vehicle not owned or leased by the Party.

XX. TERM

This Agreement shall be in effect for five (5) years commencing on October 1, 2023, and ending September 30, 2028. The Parties may agree to one (1) additional five (5) year term extension ending September 30, 2033 and one (1) additional two (2) year term extension ending September 30, 2035. If either Party intends not to extend the terms beyond fiscal year 2028 or 2033, the Party shall notify the other in writing of this intent one hundred eighty (180) days prior to the expiration of the existing term.

XXI. WASTE FLOW/FLOW CONTROL

COUNTY shall enact and maintain ordinances in full force and effect and use best efforts to enforce applicable ordinances to require all Acceptable Waste, excluding Recyclable Materials, produced within Rural Latah COUNTY to be delivered to the Designated Waste Processing Facility.

XXII. RESOLUTION OF DISPUTES

Any dispute arising as to the terms of this Agreement, excepting the compensation to be paid to CITY, as referenced in Section XI, shall be dealt with in the following manner, unless otherwise specified:

- A. The Party seeking resolution of a dispute under this Agreement shall provide the other Party with written notice of the specific nature of the dispute and the section of this Agreement relied on for its position;
- B. The Party receiving the notice shall respond in writing within five (5) working days as to what action it will take to resolve the dispute;
- C. If a dispute continues to exist, the Parties shall meet within ten (10) working days from the date of the receipt of the written response in an attempt to resolve the dispute. COUNTY shall be represented by the Latah County Board of Commissioners, and/or any other appropriate COUNTY officials, and CITY shall be represented by its Mayor (and any other representatives it desires to have present), in an attempt to resolve the dispute.
- D. Such resolution of the dispute as the Parties are able to agree upon shall be put in writing and signed by the representatives of each Party and shall become a part of this Agreement.
- E. If a dispute is not resolved through the foregoing procedures, either Party may seek satisfaction through a complaint filed in the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah, which shall be the exclusive forum agreed to by the Parties. (In any matter before the court, the remedy of specific performance shall be the preferred remedy.) In any action filed pursuant to this Agreement, costs and reasonable attorney fees shall be awarded by the court to the prevailing Party.
- F. Any time limits for action under this Agreement may be increased or decreased by mutual agreement of the Parties, said agreements to be in writing.

XXIII. SEVERABILITY

If any provision of this Agreement shall be declared illegal, void, or unenforceable, the remaining provisions herein shall not be affected and shall remain in full force and effect.

XXIV. ENTIRE AGREEMENT

This Agreement and its Exhibit(s) constitute(s) the entire agreement and understanding between the Parties and it shall not be considered modified, altered, changed or amended in any respect unless done in accordance with this Agreement, reduced to writing, and signed by the Parties hereto. Any finding by a court of competent jurisdiction that any part or provision of this Agreement is unconstitutional or invalid shall not invalidate any other provision hereof.

XXV. PRIOR AGREEMENTS

This Agreement supersedes any and all prior Agreements between the Parties for solid waste disposal services.

XXVI. MISCELLANEOUS

CITY agrees that it shall offer, for a period of sixty (60) days from the date of execution of this Agreement by CITY and COUNTY, the Cities of Potlatch, Deary, Bovill, Kendrick, Juliaetta, Troy, and Genesee an agreement for Disposal of Solid Waste which is similar in terms to this Agreement. In the event that any of the aforementioned cities do not accept such offer within such sixty (60) day period, CITY shall not be obligated to grant such city or cities an agreement similar in terms to this Agreement.

CITY, by and through its Mayor, and COUNTY, by and through its Board of County Commissioners, have duly executed this Agreement in duplicate originals, to be effective on the 1st day of October, 2023, notwithstanding the date executed by the Parties hereto.

LATAH COUNTY:

ATTEST:

Tom Lamar, Chair

Julie Fry, Clerk

John Bohman, Commissioner

Kathie LaFortune, Commissioner

CITY OF MOSCOW, IDAHO:

ATTEST:

Arthur D. Bettge, Mayor

Laurie M. Hopkins, CITY Clerk

EXHIBIT “A”

**SCHEDULE OF REIMBURSEMENT
October 1, 2023 through September 30, 2028**

Latah County (COUNTY) agrees to pay the City of Moscow (CITY) the amounts shown herein for Solid Waste Disposal, pursuant to this Agreement, and such being delivered to the Solid Waste Processing Facility by COUNTY’s collection franchisee or other person, or entity authorized by COUNTY.

1. Municipal Solid Waste Disposal (per ton):

FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
\$99.27	\$100.76	\$102.27	\$103.80	\$105.36

2. Non-Municipal Solid Waste Disposal (per ton):

FY 2024	FY 2025	FY 2026	FY 2027	FY2028
\$40.50	\$41.11	\$41.73	\$42.36	\$43.00

3. Mixed Municipal/Non-Municipal Solid Waste Disposal (per ton):

FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
\$70.04	\$71.10	\$72.17	\$73.26	\$74.36

4. Compostable Materials: No Charge

5. Recyclable Materials: No Charge

6. Tire Disposal (per ton): \$225.00 **Tires with Rims (each):** Additional \$2.20

7. Program Cost Rates: \$1.30 per month per billed COUNTY Collection Unit

This rate shall pay for unlimited access by individual COUNTY residents to the CITY Recycling Facility, Household Hazardous Waste Facility, Solid Waste Education, and individual access to the Solid Waste Processing Facility; provided, however, that individual access to the Solid Waste Processing Facility shall be assessed a ten dollar (\$10) per load “minimum fee” and shall be billed directly to the resident.

Fiscal year 2024 fee modification shall be effective October 1, 2023. The fee modification date shall be October 1 of each year (example: Fiscal year 2024 fee modification shall be effective October 1, 2023).

EXHIBIT "B"

FIRST AMENDMENT TO AGREEMENT FOR SOLID WASTE TRANSPORTATION AND DISPOSAL BETWEEN CITY OF MOSCOW, IDAHO AND FINLEY-BUTTES LIMITED PARTNERSHIP

THIS FIRST AMENDMENT TO AGREEMENT FOR SOLID WASTE TRANSPORTATION AND DISPOSAL BETWEEN CITY OF MOSCOW, IDAHO AND FINLEY-BUTTES LIMITED PARTNERSHIP (hereinafter "First Amendment"), is made and entered into this 19th day of December, 2022, by and between City of Moscow, Idaho, a municipal corporation of the State of Idaho, 206 East Third Street, Moscow, Idaho, 83843 (hereinafter "CITY"), and Finley-Buttes Limited Partnership, an Oregon limited partnership, (hereinafter "CONTRACTOR").

WITNESSETH:

WHEREAS, CONTRACTOR was selected to own, otherwise provide, and operate Facilities to accept CITY Acceptable Waste in loaded Trailers at CITY's designated Solid Waste Processing Facility (hereinafter "SWPF") and to Transport to and Dispose of that Acceptable Waste at the Disposal Site for CITY through an executed Agreement approved by City Council on October 7, 2019, approved by CONTRACTOR's Board of Directors as evidenced by the Unanimous Written Consent of the General Partner of Finley-Buttes Limited Partnership dated October 16, 2019 and said Agreement was executed by the Parties on November 4, 2019, see Attachment "A" (hereinafter "Agreement"); and

WHEREAS, the Agreement provides for modification upon written agreement signed by the Parties (Article 2, Section 2.13); and

WHEREAS, the Agreement permits CITY, at CITY's sole discretion, to consider CONTRACTOR requests for reimbursements due to extraordinary fuel price increases (Article 8, Section 8.2 A.(4)); and

WHEREAS, the Agreement allows for adjustment of a Service Fee or any other payment or fee at any time by mutual consent of the Parties (Article 8, Section 8.4. E); and

WHEREAS, CONTRACTOR requested fuel relief due to the unanticipated significant increases in diesel fuel costs and the fact that a portion of CONTRACTOR's cost is predicated on fuel usage to transport CITY waste two hundred fourteen (214) miles one way; and

WHEREAS, CITY has determined that the requested fuel relief is reasonable and appropriate and has previously granted fuel relief to CONTRACTOR's predecessor when similar fuel cost volatility occurred; and

WHEREAS, the proposed fuel relief adjustment contained herein provides a fair and predictable method of accounting for fuel cost volatility and provides for both reimbursement of excessive fuel expenses to CONTRACTOR when fuel prices exceed 15% of the adjusted base fuel index, and credits to CITY when fuel prices drop 15% below the adjusted base fuel index as described herein; and

FIRST AMENDMENT TO SOLID WASTE TRANSPORTATION AND DISPOSAL AGREEMENT
FINLEY-BUTTES LIMITED PARTNERSHIP

2022-203 PAGE 1 OF 4

WHEREAS, the Parties intend to modify the Agreement through this First Amendment to accommodate CONTRACTOR'S requested fuel adjustment;

NOW, THEREFORE, it is agreed, for and in consideration of the mutual covenants and promises between the Parties hereto, as follows:

Section 1. All matters stated above are found to be true and correct and are incorporated herein by reference as if copied in their entirety and shall be adopted with the following sections of this First Amendment.

Section 2. It has been determined that a fair and predictable method of accounting for fuel cost volatility is warranted and is in the best interests of both Parties.

Section 3. CITY shall apply fuel cost adjustments as a payment to CONTRACTOR, or CONTRACTOR will apply the fuel cost adjustment as a credit to CITY, when the index changes as defined below.

1. The index to be used when considering fuel price adjustments pursuant to this First Amendment shall be the U.S. Energy Information Administration (EIA) https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=pet&s=emd_epd2d_pte_r5xca_dpg&f=m, Monthly West Coast (PADD 5) Except California No 2 Diesel Retail Prices (Dollars per Gallon).
2. The Current Fuel Index (CFI) shall be the current month's average price per gallon as reported by EIA as referenced herein. The monthly average CFI, shall be used to compute fuel adjustments for the same month that services are performed for CITY. (i.e. October CFI used to compute fuel adjustment for October services). Fuel adjustments will be calculated by the 15th of the month for the prior month's services, and any payments or credits will be applied to the subsequent month's bill (i.e. September's adjustment will be calculated on October 15th and any payments or credits will be applied to October's billing).
3. Fuel adjustments provided by this First Amendment shall be retroactively effective to January 1, 2022, and shall continue thereafter through the duration of the term of the Agreement.
4. Effective January 1, 2022, the initial base fuel index (BFI) shall be Three Dollars and Thirty-One Cents (\$3.31) per gallon. The BFI shall thereafter be adjusted annually on October 1st of each year beginning October 1, 2022 to establish the Adjusted Base Fuel Index (ABFI) by an amount equal to forty percent (40%) of the annual Consumer Price Index (CPI) as published in January of each year by the United States, Bureau of Labor Statistics (Index I.D. CUUR0000SA0, All Urban Consumers, U.S. All items, 1982-84 = 100) as described herein.

$$ABFI = BFI * (CPI \text{ annual adjustment} * 40\%)$$

Where:

BFI = Base Fuel Index

FIRST AMENDMENT TO SOLID WASTE TRANSPORTATION AND DISPOSAL AGREEMENT
FINLEY-BUTTES LIMITED PARTNERSHIP

PAGE 2 OF 4

CPI Annual Adjustment = ((current year annual average CPI - prior year annual average CPI) / prior year annual average CPI)
ABFI = adjusted base fuel index

5. A fuel price adjustment will only be made when the CFI varies by more than fifteen percent (15%) from the ABFI. Payments and credits shall be computed as follows:

Contractor payment if CFI is greater than 115% of ABFI:
 $FPA = (CFI - (ABFI * 115\%)) * Q * T$

City credit if CFI is less than 85% of ABFI:
 $FPA = (CFI - (ABFI * 85\%)) * Q * T$

Where:
FPA = fuel price adjustment
Q = 92.44 gallons per trip
T = monthly trips

Section 4. All other terms and conditions of the Agreement that are not amended by this First Amendment shall remain in full force and effect.

Section 5. This First Amendment was adopted by the City Council of the City of Moscow, Idaho and Approved by the Mayor of the City of Moscow on a regularly scheduled meeting dated November 5, 2022.

IN WITNESS WHEREOF, said CONTRACTOR and CITY have caused this First Amendment to be executed on the day and year first above written.

CONTRACTOR

By: Brian Evola
Brian Evola
Finley-Buttes Limited Partnership



CITY

City of Moscow, Idaho

By: Arthur D. Bettge
Arthur D. Bettge, Mayor

ATTEST

Taylor Riedner
Taylor Riedner, Deputy City Clerk

Approved As To Form:
Mia Bautista
Mia Bautista, City Attorney

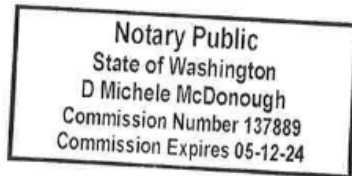
FIRST AMENDMENT TO SOLID WASTE TRANSPORTATION AND DISPOSAL AGREEMENT
FINLEY-BUTTES LIMITED PARTNERSHIP

PAGE 3 OF 4

ACKNOWLEDGMENT

STATE OF Washington) ss:
County of Clark)

On this 12th day of December, 2022, before me, a Notary Public in and for said State, appeared Brian Evola, known to me to be the person named above and acknowledged that he executed the foregoing document as the duly authorized representative for Finley-Buttes Limited Partnership.



D. Michele McDonough
Notary Public for State of Washington
Residing at Clark County
My commission expires: 05-12-24

**SOLID WASTE DISPOSAL AGREEMENT
BETWEEN CITY OF GENESSE, IDAHO AND
CITY OF MOSCOW, IDAHO**

THIS SOLID WASTE DISPOSAL AGREEMENT BETWEEN CITY OF GENESSE, IDAHO AND CITY OF MOSCOW, IDAHO (hereinafter "Agreement"), made and entered into this ____ day of _____, 2023, by and between City of Genesse, Idaho, a municipal corporation of the State of Idaho, 140 East Walnut, Genesse, Idaho, 83832 (hereinafter "GENESSE"), and the City of Moscow, Idaho, a municipal corporation of the State of Idaho, 206 East Third Street, Moscow, Idaho, 83843 (hereinafter "CITY").

W I T N E S S E T H:

WHEREAS, CITY manages and operates a solid waste and recycling processing and disposal system in Latah County; and

WHEREAS, CITY has offered to provide GENESSE with solid waste and recycling services and related programs in accordance with Federal, State of Idaho, and local statutes, laws, rules, regulations, and ordinances as defined herein; and

WHEREAS, GENESSE finds that CITY is qualified and capable to provide such services to GENESSE; and

WHEREAS, CITY and GENESSE have an existing solid waste disposal agreement that was executed on February 7, 2017, and which expires on September 30, 2023; and

WHEREAS, GENESSE wishes for CITY to continue to provide GENESSE with solid waste processing and disposal and recycling processing services; and

WHEREAS, in 2021, CITY conducted a Sanitation Rate Study to determine the cost of solid waste processing and disposal services and necessary annual adjustments; and

WHEREAS, in 2022, CITY amended its agreement with Finley-Buttes Limited Partnership (CITY's municipal solid waste (MSW) transport and disposal contractor) to provide fuel cost relief through a fuel adjustment formula as set forth in Exhibit "B" attached hereto and incorporated herein;

THEREFORE, CITY and GENESSE hereby enter into an Agreement for disposal and/or recycling of Acceptable Waste, Demolition/Inert Waste, Compostable Waste and recyclable materials received from residences, businesses, institutions and industries within GENESSE and for programs related thereto, and for and in consideration of the promises and covenants contained herein, CITY hereby agrees to and with GENESSE to undertake and execute, for an agreed upon consideration, the herein described work, in a good, substantial and workmanlike manner.

I. DEFINITIONS

For purposes of interpretation of the terms of this Agreement, the following terms, phrases and derivations shall have the following meanings. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The term "shall" is always mandatory and not merely directory.

- A. **ACCEPTABLE WASTE:** That portion of solid waste that is normally disposed of and originating from residential dwellings, businesses, industrial and commercial establishments which consists of household wastes from private residences, commercial waste which originates in wholesale, retail or service establishments such as restaurants, stores, markets, theaters, hotels and warehouses, and institutional waste material originating in schools, hospitals, research institutions and public buildings. Such Acceptable Waste shall include tires, metals and white goods. In no event shall Acceptable Waste include any Hazardous Waste, Infectious Waste or any Unacceptable Waste.
- B. **COLLECTION FRANCHISEE:** The person, persons, corporation or partnership holding a contract and/or franchise issued or granted by GENESSE authorizing such person, persons, corporation or partnership to operate, conduct or maintain a solid waste collection and disposal system upon or over any highways, streets, roads, alleys and public ways of GENESSE.
- C. **COLLECTION UNIT:** A GENESSE resident and/or business receiving solid waste collection services at a place of residence or place of business located within GENESSE.
 - 1. **Individual Unit:** A dwelling within GENESSE occupied by a person or group of persons. An individual unit shall be deemed occupied when either occupied or generating solid waste. Each unit within an apartment building, condominium, duplex or mobile home park shall be treated as an individual residential unit, unless served by a mechanical container or compactor.
 - 2. **Commercial Unit:** Each space within GENESSE occupied by an individual business. A business shall be deemed occupied when either occupied or generating solid waste.
- D. **COMPOSTABLE WASTE:** That Acceptable Waste that has been accepted at the Designated Waste Processing Facility for composting. Such Compostable Waste shall conform to all statutes, rules and regulations of any governmental regulatory agency which pertains to composting.
- E. **DEMOLITION/INERT WASTE:** That Acceptable Waste that has been accepted at the Designated Waste Processing Facility for placement in the demolition/inert landfill. Such Demolition/Inert Waste shall conform to all statutes, rules and regulations of any governmental regulatory agency which pertains to demolition/inert landfiling.

- F. **DESIGNATED WASTE PROCESSING FACILITY:** The facility or site designated by CITY where Acceptable Waste is compacted, incinerated, landfilled, composted, transferred or otherwise disposed of or treated prior to disposal.
- G. **DIRECTOR OF SOLID WASTE SERVICES:** The Moscow CITY Supervisor or such other person or persons so designated by the Moscow CITY Supervisor.
- H. **HAZARDOUS WASTE:** Any chemical, compound, mixture, substance or article which is designated by federal law or regulation, Idaho law or regulation or regulation of any other state when applicable (such as in the case of solid waste exported to or through another state for ultimate disposal) to be 'hazardous', 'dangerous', or 'extremely dangerous'. Hazardous Waste includes any material by reason of its composition or characteristics, is:
1. Toxic or hazardous waste as defined in either the Solid Waste Disposal Act, 42 U.S.C. Section 6901 *et seq*, as replaced, amended, expanded or supplemented, or any laws of similar purpose or effect, and such policies or regulations thereunder, or under relevant state law as replaced, amended, expanded or supplemented, or any laws of similar purpose or effect, and any rules, regulations or policies thereunder, or
 2. Special nuclear or by-products material within the meaning of the Atomic Energy Act of 1954, 42 U.S.C. Section 2011 *et seq*, as replaced, amended, expanded or supplemented, or any laws of similar purpose or effect, and such policies or regulations thereunder, or under relevant state law as replaced, amended, expanded or supplemented, or any laws of similar purpose or effect, and any rules, regulations or policies thereunder; or
 3. Other material which any governmental agency or unit having appropriate jurisdiction shall determine from time to time is harmful, toxic or dangerous or otherwise ineligible for transfer through, transportation by, or disposal from the site; or
 4. Any material which would result in residue being designated as hazardous waste under the above; or
 5. Any waste falling within the definition contained in Idaho Code § 39-4403 (8).
- I. **HOUSEHOLD SOLID WASTE:** That Acceptable Waste, including garbage or trash produced by ordinary residential units, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas, which fits into a bag, manual container or bundle less than four feet (4') in length. Does not include bulky, Infectious Waste, Hazardous Waste, Unacceptable Waste or any type of solid waste that is not normally collected by GENESSE's collection Franchisee at individual or commercial units.
- J. **INFECTIOUS WASTE:** Any material, chemical, compound, mixture, substance or article known to be infectious by the generator or producer or which is designated by the United States Environmental Protection Agency or other appropriate agency of the Federal

Government or the State of Idaho to be "infectious" as that term is commonly defined by or pursuant to law.

- K. **PRODUCER:** Any person, business or other entity which produces solid waste within GENESSE.
- L. **PUTRESCIBLE WASTE:** Solid waste which has the capacity to become rotten or foul.
- M. **RATE MODIFICATION DATE:** The date whereby all rate adjustments shall become effective. The rate modification date shall be October 1 of each year this Agreement is in force.
- N. **RESOURCE RECOVERY:** The process, including recycling, of obtaining useful material or energy resources from solid waste.
- O. **TRANSFER STATION:** The transfer, processing and transportation facility which has been designated by CITY for the purpose of transferring, processing and/or transporting Transport Waste.
- P. **TRANSPORT WASTE:** That Acceptable Waste which has been accepted at the Designated Waste Processing Facility for loading into transport vehicles for transport to an Ultimate Disposal Site. Such Transport Waste shall conform to the rules of, and be acceptable to, the Ultimate Disposal Site.
- Q. **ULTIMATE DISPOSAL SITE:** Any disposal site chosen by CITY which may ultimately receive Transport Waste from the Designated Waste Processing Facility.
- R. **UNACCEPTABLE WASTE:** That portion of the solid waste such as, but not limited to, explosives, pathological and biological waste, Infectious Waste, Hazardous Waste (except as deemed subject to the Household Hazardous Waste Program as defined in this Agreement), radioactive materials, foundry sand, cesspool waste, human remains, industrial process wastes, motor vehicles (including major motor vehicle parts such as transmissions, rear ends, springs and fenders), agricultural and farm machinery and equipment, marine vessels and major parts thereof or any other large type of machinery or equipment, or that which in the reasonable judgment of the Director may present a substantial endangerment to health or safety, or has a reasonable possibility of adversely affecting the operation of the Designated Waste Processing Facility or the acceptance of Transport Waste by the Ultimate Disposal Site.
- S. **WHITE GOODS.** Appliances such as refrigerators, ranges, water heaters, freezers, unit air conditioners, washing machines, dishwashers, clothes dryers, and other similar domestic and commercial large appliances.

II. SCOPE OF WORK

- A. SERVICE: CITY shall furnish, manage and maintain a system of processing, transportation, and disposal and/or recycling of Acceptable Waste as described herein. CITY shall further provide access to CITY's Designated Waste Processing Facility, Recycling Center, Household Hazardous Waste Program and Solid Waste Education Program to the residents of GENESSE as provided herein. These services shall include all supervision, materials, equipment, labor and all other items necessary to satisfy the terms of this Agreement.
- B. ACCEPTANCE OF ACCEPTABLE WASTE: CITY shall accept all Acceptable Waste delivered to its Designated Waste Processing Facility by GENESSE's Collection Franchisee and/or by individual residents of GENESSE, provided all tipping fees associated with such acceptance are paid. CITY shall provide for the processing of said Acceptable Waste, including landfilling, composting, recycling and/or hauling of said Acceptable Waste (Transport Waste) to the Ultimate Disposal Site.
- C. ACCEPTANCE OF RECYCLABLE MATERIALS: CITY shall accept, process and provide for ultimate disposal of certain recyclable materials delivered to the CITY's Recycling Center by GENESSE's Collection Franchisee or the individual residents of GENESSE, provided all tipping fees associated with such acceptance are paid. The types of materials to be accepted at CITY Recycling Center, the amount of money to be paid, if any, for recyclable materials and the types of recyclable materials upon which such money will be paid shall be the sole decision of CITY. Provided, that GENESSE's Collection Franchisee, other persons authorized by GENESSE to operate a recycling collection business, or any other person operating a recycling collection business shall not be paid for recyclable materials collected and/or delivered to CITY's Recycling Center. Provided further, that GENESSE and/or residents of GENESSE may arrange for the processing of such recyclable materials through any other public or private entity.
- D. HOUSEHOLD HAZARDOUS WASTE PROGRAM: CITY shall provide access to CITY's Household Hazardous Waste Collection Facility to all residents of GENESSE. The types of materials to be accepted pursuant to such Household Hazardous Waste Collection program and the operation of such program shall be the sole decision of CITY, upon consultation with GENESSE.
- E. SOLID WASTE EDUCATION PROGRAM: CITY shall include GENESSE in any and all solid waste education programs established by CITY.
- F. INFECTIOUS WASTE AND POTENTIALLY HARMFUL WASTES:
 - 1. CITY may provide, but is not obligated to provide, disposal programs for Infectious Waste or potentially harmful wastes. In the event that CITY elects to provide such program(s), CITY shall handle such Infectious Waste and potentially harmful wastes in a manner consistent with all applicable regulations.
 - 2. Producers of such wastes shall arrange with CITY, at Producers own expense, for the disposal of such wastes and the charges therefor, and the costs of disposing of such wastes shall be set by CITY.

- G. **UNACCEPTABLE WASTE:** GENESSE shall not permit its Collection Franchisee or any other person to place Unacceptable Waste into a collection vehicle or container. GENESSE shall implement a program of training and procedure which is designed to prevent the placing of Unacceptable Waste into collection vehicles or containers. In the event that GENESSE's Collection Franchisee or any other person delivers unacceptable waste to the Designated Waste Processing Facility, CITY shall, at CITY's sole option, either:
1. Dispose of such Unacceptable Waste in a legally proper manner, and shall charge GENESSE for all costs thereof, plus actual reasonable administrative charges not to exceed fifteen percent (15%) of such costs; or
 2. Reject such Unacceptable Waste.

III. DESIGNATION OF ULTIMATE DISPOSAL SITE(S)

The Parties understand and agree that CITY shall have the sole and exclusive right to designate the location or locations to which solid waste will be transported for processing and ultimate disposal. Provided that CITY shall consult with GENESSE and seek input regarding the designation of said ultimate disposal site and shall in good faith consider such input.

IV. HOLIDAYS

The following shall be holidays for purpose of this Agreement:

New Year's Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Day

CITY may decide to observe any or all of the above listed holidays by suspension of disposal or recycling services on a holiday, but such decision in no manner relieves CITY of its obligation to provide such services on the next regularly scheduled service day.

V. COMPLAINTS

All complaints regarding CITY's performance of this Agreement shall be made through GENESSE to the Director of Solid Waste Services and shall be given prompt and courteous attention. Complaints made directly to CITY from producers in GENESSE shall be given prompt and courteous attention. CITY shall investigate and respond to such complaints and shall inform GENESSE in a timely manner of the nature of such complaints and any remedial action taken in response to such complaints.

VI. NOTIFICATION

GENESSE shall notify all producers to be served hereunder about complaint procedures, rates, fees, regulations, schedules, and changes in the operation of the disposal and or/recycling system by means of press releases and/or publication of pamphlets and/or other means as elected by GENESSE, and through at least one (1) annual mailing per year. The cost of such notification shall be the responsibility of GENESSE.

VII. POINT OF CONTACT

All notices between CITY and GENESSE shall be directed by CITY to the Mayor of GENESSE, P O Box 38, Genesse, Idaho, 83832, and by GENESSE to CITY via the Director of Solid Waste Services, at P O Box 9203, Moscow, Idaho, 83843.

VIII. SALVAGE RIGHTS

CITY shall have the full and exclusive right to all salvageable materials when such materials are accepted at the Designated Waste Processing Facility or Recycling Center pursuant to this Agreement, and CITY shall have the sole right to any and all funds received from the sale of said salvageable materials. Salvaging or scavenging by GENESSE, its Collection Franchisee(s), or any of its employees or agents after delivery to said Solid Waste Processing Facility or Recycling Center is prohibited.

IX. INSURANCE

- A. CITY shall at all times during the term of this Agreement, maintain, or cause its franchisees to maintain in full force and effect Employer's Liability, Workmen's Compensation, Public Liability and Property Damage insurance, including contractual liability coverage. Additionally, at all times during the term of this Agreement, GENESSE shall obtain and maintain, or cause its Collection Franchisee to obtain and maintain in full force and effect, public liability insurance and property damage insurance, including contractual liability coverage in the amounts of one million dollars (\$1,000,000.00) per occurrence, and two million dollars (\$2,000,000.00) aggregate. All insurance shall be provided before commencement of work hereunder. CITY and GENESSE shall annually furnish the other with certificates of insurance or other evidence satisfactory to the other that such insurance has been procured and is in force. Said certificates shall contain the following express provisions:

"This is to certify that the policies of insurance described herein have been issued to the insured for whom this certificate is executed and are in force at this time. In the event of cancellation or material change in a policy affecting the certificate holder, thirty (30) days prior written notice of said cancellation or change shall be provided to the certificate holder."

- B. For purposes of this Agreement, CITY shall carry, and/or shall cause its franchisee(s) or agents to carry, the following types of insurance in at least the limits specified below:

<u>COVERAGE</u>	<u>LIMITS OF LIABILITY</u>
Workmen's Compensation	Statutory
Employer's Liability	\$1,000,000
General Liability	\$1,000,000
except automobile (bodily injury and/or property damage)	each occurrence/ \$2,000,000 aggregate
Automobile bodily injury and/or property damage liability, combined single limit	\$1,000,000 each occurrence

All coverage subject to policy conditions

- C. As an alternative to the above, CITY may, with express written permission of GENESSE, provide the above public liability and property coverage under a plan of self-insurance. Each insurance policy with respect to public liability insurance may provide for self-insured retention of an amount of two hundred and fifty thousand dollars (\$250,000.00) with the result that CITY is its own insurer to that extent and with the requirement that CITY provides GENESSE with such evidence of financial responsibility as deemed necessary by GENESSE.

X. INTERRUPTION OF SERVICE

- A. Interruption of service shall mean that period of time during which services to be provided by CITY pursuant to this Agreement are interrupted, discontinued or substantially reduced, except as excused hereunder, for a period of five (5) consecutive days exclusive of Sundays and Holidays as defined herein; or after the expiration of five (5) days after notice, in accordance with the procedures required herein, is provided to CITY by GENESSE that GENESSE is terminating this Agreement because of a breach or default on the part of CITY and until such time as other arrangements can be made by GENESSE for other such services.
- B. GENESSE shall have the right to contract with another person, entity or corporation to provide the services set forth herein in the event of an interruption of service by CITY, for the duration of such interruption of service. In the event of interruption of service, all payments to CITY shall be suspended. During the period of such interruption of service, CITY shall be liable to GENESSE for the reasonable costs of providing such services less the amount of payment GENESSE would have been liable to make to CITY for providing such services. GENESSE shall document the actual reasonable costs of providing such services during such interruption of service. CITY shall not be liable for costs which are not supported by such documentation.

- C. In the event that such interruption of service continues for a period of thirty (30) consecutive days, after the expiration of the 30th day, either GENESSE or CITY may terminate this Agreement. Termination shall be effective not less than one hundred fifty (150) days after service of the notice of termination upon the non-terminating Party. In the event of such termination by CITY, the liability of CITY to GENESSE shall be limited to the reasonable increased costs (documented as provided herein) of providing such services during such interruption of service prior to such termination.

XI. BASIS AND METHOD OF PAYMENT

- A. Reimbursement. GENESSE shall pay CITY in accordance herewith the amounts set forth in Exhibit "A" for each service. GENESSE shall also reimburse CITY for any fuel surcharges incurred on behalf of GENESSE in accordance with the fuel adjustment agreement between CITY and Finley-Buttes Limited Partnership attached hereto as Exhibit "B". GENESSE's pro rata share of any fuel surcharge shall be calculated by dividing GENESSE's tonnage processed within the billing period by the total tonnage processed within the billing period. Should CITY receive a credit in accordance with fuel adjustment agreement, CITY shall calculate and provide GENESSE with credit in the same manner. The rates specified shall include all costs, fees and other expenses of CITY associated with the performance of its obligations hereunder, including those costs, if any, associated with (a) tipping fees at the Designated Waste Processing Facility; (b) transport to the Ultimate Disposal Site; (c) disposal fees at the Ultimate Disposal Site; and (d) program area costs as shown at Exhibit "A".
- B. Modification of Rates.
1. Annual Rate Adjustment. The rates for services provided under this agreement shall be escalated annually by one point five percent (1.5%) effective upon October 1 of each year of the initial term as shown in Exhibit "A". Rates beyond the initial five (5) year term shall be determined through future sanitation rate studies and shall be adjusted prior to the commencement of any future term extension.
 2. CITY's Request.
 - a. CITY shall have the right to petition GENESSE at any time for additional fee adjustments on the basis of unusual changes in the cost of operations i.e., revised federal and State of Idaho laws affecting this Agreement, which require mandatory compliance by the CITY resulting in increased operating costs to CITY, (as proven by full documentation of such increased operating costs as requested by GENESSE). All such requests shall be fully developed setting forth the changes requested, existing costs, summary of estimated change in costs and the amount of fee change requested. GENESSE shall respond to such requests within thirty (30) days. If the Parties are unable to reach agreement on a proposed rate adjustment, either Party may invoke the provisions of paragraph B(4), below.

- b. GENESSE understands that the cost of CITY's operations and services to be provided hereunder are subject to certain agreements (i.e., a Franchise Agreement and Hauling and Disposal Agreement). GENESSE has had the opportunity to review and analyze such agreements. CITY shall have the right to petition for a fee adjustment from GENESSE, and GENESSE shall be obligated to grant such fee adjustment, when such adjustment is made by CITY in response to a fee adjustment required by CITY's contractors pursuant to such agreements. All such requests shall be fully developed setting forth the changes requested, existing costs, summary of estimated change in costs and the amount of fee change requested. GENESSE shall respond to such requests within thirty (30) days. All fee adjustments made pursuant to this Section XI.B.2.b. shall be limited to GENESSE's pro-rata share of the actual fee adjustment(s) required of CITY.
3. GENESSE's Request. GENESSE may petition CITY for a change in either the level or nature of the service provided, and the resulting proposed fee adjustment. The notice shall include a listing by GENESSE of the type or nature of documentation, analysis or audit it is relying upon in support of the proposed change. Within sixty (60) days following receipt of such a request, unless some other time period is mutually agreed to by the Parties, CITY shall notify GENESSE as to whether it agrees with the modification of level and/or nature of service and/or the fee adjustment. Nothing herein shall be construed to require CITY to consent to such change in the nature and/or level of service. In the event CITY does not agree with GENESSE's fee adjustment, it shall also provide GENESSE with copies of all documentation, analysis or audit, on which CITY relies with CITY's written response. If CITY agrees with the fee adjustment, such adjustment will become effective upon GENESSE giving written notice to CITY to implement the change in the level and/or nature of service. In the event that GENESSE does not implement such changes in the nature and/or level of service (after CITY has agreed to such changes), GENESSE shall reimburse CITY for its costs, plus actual reasonable administrative charges not to exceed fifteen percent (15%) of such costs, incurred in responding to GENESSE's request for such adjustment. It is further acknowledged that this paragraph shall not operate so as to terminate the material provisions and intent of this Agreement; that is, CITY shall provide the solid waste disposal services set forth herein to GENESSE during the term of this Agreement while deciding on GENESSE's petition for change.
4. Arbitration of Disputes. In the event that the Parties cannot agree upon compensation for the work to be performed, the Parties agree that such a dispute shall be subject to binding arbitration pursuant to the rules of the Uniform Arbitration Act. The Parties shall mutually select a disinterested, non-local arbitrator. In the event the Parties are unable to mutually agree, each Party shall designate a disinterested, non-local individual and these two (2) designees shall then select the arbitrator. All designations of arbitrator or designee shall occur within ten (10) days of notice of dispute being delivered by one (1) Party to the other, and designees shall select the arbitrator within ten (10) days of their designation. The decision of the arbitrator shall be binding on both Parties. The non-prevailing Party, as determined by the arbitrator, shall pay all costs of the arbitration and the prevailing Party shall be awarded its reasonable costs

and reasonable attorney fees incurred in participating in such arbitration, said costs and attorney fees shall be limited to the amount of ten thousand dollars (\$10,000.00).

5. Effective Date. The fee adjustments contemplated in subparagraphs (2) and (3) above, shall become effective on the date(s) that the changes in service commence, or on the date such contractual rates change.
 6. Emergency Services. Should additional services be required in an emergency, above and beyond those contemplated in this Agreement, GENESSE may order reasonable delivery of services and GENESSE shall pay the verifiable costs of such services, plus actual reasonable administrative charges not to exceed fifteen percent (15%) of such costs.
- C. Payment. CITY shall be responsible for billing GENESSE monthly for the services set forth herein. GENESSE shall remit payment to CITY by the 20th day of each month following receipt of CITY's billing. In the event that GENESSE fails to remit payment to CITY by the 20th day of each month for such billing, GENESSE shall pay to CITY, in addition to the amount of the billing, a late fee in the amount of one percent (1%) of the amount of the billing per day beyond the due date. In addition to this late fee, in the event that GENESSE fails to remit payment to CITY within fourteen (14) days from the due date, CITY may, in its discretion, without penalty or determination that GENESSE is in breach of this Agreement, suspend its obligations and services to be provided hereunder until such charges are paid.

XII. TITLE TO WASTE

Title to all Acceptable Waste accepted at CITY's Designated Waste Processing Facility or Recycling Center, shall pass to CITY when so accepted. Title to Hazardous Wastes, potentially harmful wastes, Infectious Wastes or other Unacceptable Waste shall not vest with CITY, but shall remain in the Producer. GENESSE further agrees that it shall have the responsibility to identify the Producer of such wastes.

XIII. WAIVER

The failure of GENESSE or CITY to insist on strict performance of any of the terms and conditions hereof shall not be deemed a waiver of the rights or remedies that GENESSE or CITY may have regarding that specific instance, and shall not be deemed a waiver of any subsequent breach or default in any of the terms and conditions hereof. Making or receiving payments pursuant to this Agreement during the existence of a dispute shall not be deemed to and shall not constitute a waiver of any of the claims or defenses of the Party making such payment.

XIV. ADHERENCE TO LAWS

CITY and GENESSE shall at all times comply with and adhere to applicable laws governing the performance of the services described herein. Non-compliance with applicable statutes, rules and regulations by CITY or GENESSE shall act as a breach of this Agreement and shall subject the non-complying Party to liability therefore. CITY and GENESSE shall report violations of such laws as soon as practicable.

XV. RECORDS AND INSPECTION

A. Records

CITY shall maintain such records as may be specified herein or may be necessary to document the quantity of solid waste accepted and processed in the performance of this Agreement separately from that solid waste received by CITY pursuant to any other agreement with any governmental entity, business or person and to document the time and date of performance of services hereunder. Actual scale records shall be utilized in determining the quantity of solid waste collected and transported hereunder unless the Parties hereafter agree to use a system of estimation. Such actual scale weights shall be obtained utilizing the scales maintained at the Designated Waste Processing Facility. CITY shall make all documents relating to the performance of work hereunder, including scale records, available to GENESSE within fourteen (14) working days of receiving written notice detailing the documents requested. This time period may be extended where extenuating circumstances exist. Should GENESSE desire that records be maintained other than as provided above, GENESSE may petition CITY to cause such records to be maintained, and CITY, in its sole discretion, may cause such records to be maintained, provide that the cost of maintaining such records shall be borne by GENESSE. Further the Parties agree that CITY shall provide GENESSE, with each monthly billing, the following information as to the solid waste received and processed hereunder during the preceding month.

1. Tonnage of Acceptable Waste broken down into categories of:
 - a. Transport Waste;
 - b. Inert/Demolition/Compost Waste;
 - c. Recyclable materials received from GENESSE's collection franchisee.
2. The number of White Goods accepted at the Designated Waste Processing Facility, including the names and addresses of the Producers of such White Goods. Provided that any additional cost to CITY incurred in providing such information shall be borne by GENESSE.

B. Inspection

GENESSE reserves the right to conduct on-site inspections of CITY's operations (including, without limitation, the actual weighing of solid waste) without notice and at reasonable times and in a reasonable manner. The costs of such inspections, including any increase in CITY's cost of operations as a result of accommodating such inspections shall be borne by

GENESSE. CITY shall furnish GENESSE with all requested information relating to such work, provided the costs of providing such information shall be borne by GENESSE.

XVI. JURISDICTION AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho, and venue shall be in the District Court of Latah County.

XVII. BINDING ON SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors and permitted assigns.

XVIII. DELAYS IN CARRYING OUT WORK

CITY shall not be held responsible by reason of any delay in the performance of this Agreement when such delay is primarily caused by some act of God, provided that in the case of delay caused by an act of God, CITY shall give notice to GENESSE (in writing, at the earliest possible time) of the causes of such delay. Such a delay shall not be considered to be an interruption of service as designated in Section X of this Agreement. Provided, that if such delay due to an act of God continues for a period of twenty (20) consecutive days, either Party may terminate this Agreement without liability to the other Party. Such termination shall be effective upon written notice provided to the other Party.

XIX. HOLD HARMLESS/INDEMNIFICATION

- A. The Parties are governmental entities subject to statutory and constitutional restrictions concerning the acceptance of liability. The Parties liabilities are further governed by the Idaho Tort Claims Act. It is the intention of the Parties that each will be responsible for its own acts and omissions and those of its officers and employees acting within the course and scope of their employment.
- B. Further, the Parties understand that the Idaho Tort Claims Act, Idaho Code § 6-903(2)(ii), states that each Party's liability is secondary to the obligation of an insurer or indemnitor, or other vehicle not owned or leased by the Party.

XX. TERM

This Agreement shall be in effect for five (5) years commencing on October 1, 2023, and ending September 30, 2028. The Parties may agree to one (1) additional five (5) year term extension ending September 30, 2033 and one (1) additional two (2) year term extension ending September 30, 2035. If either Party intends not to extend the terms beyond fiscal year 2028 or 2033, the Party shall notify the other in writing of this intent one hundred eighty (180) days prior to the expiration of the existing term.

XXI. WASTE FLOW/FLOW CONTROL

GENESSE shall enact and maintain in force and effect and use best efforts to enforce applicable ordinances to require all Acceptable Waste, excluding Recyclable Materials, produced within GENESSE to be delivered to the Designated Waste Processing Facility.

XXII. RESOLUTION OF DISPUTES

Any dispute arising as to the terms of this Agreement, excepting the compensation to be paid to CITY, as referenced in Section XI, shall be dealt with in the following manner, unless otherwise specified:

- A. The Party seeking resolution of a dispute under this Agreement shall provide the other Party with written notice of the specific nature of the dispute and the section of this Agreement relied on for its position;
- B. The Party receiving the notice shall respond in writing within five (5) working days as to what action it will take to resolve the dispute;
- C. If a dispute continues to exist, the Parties shall meet within ten (10) working days from the date of the receipt of the written response in an attempt to resolve the dispute. GENESSE shall be represented by its Mayor (and any other representatives it desires to have present), and CITY shall be represented by its Mayor (and any other representatives it desires to have present), in an attempt to resolve the dispute.
- D. Such resolution of the dispute as the Parties are able to agree upon shall be put in writing and signed by the representatives of each Party and shall become a part of this Agreement.
- E. If a dispute is not resolved through the foregoing procedures, either Party may seek satisfaction through a complaint filed in the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah, which shall be the exclusive forum agreed to by the Parties. (In any matter before the court, the remedy of specific performance shall be the preferred remedy.) In any action filed pursuant to this Agreement, costs and reasonable attorney fees shall be awarded by the court to the prevailing Party.
- F. Any time limits for action under this Agreement may be increased or decreased by mutual agreement of the Parties, said agreements to be in writing.

XXIII. SEVERABILITY

If any provision of this Agreement shall be declared illegal, void or unenforceable, the remaining provisions herein shall not be affected and shall remain in full force and effect.

XXIV. ENTIRE AGREEMENT

This Agreement and its Exhibit(s) constitute(s) the entire agreement and understanding between the Parties and it shall not be considered modified, altered, changed or amended in any respect unless done in accordance with this Agreement, reduced to writing, and signed by the Parties hereto. Any finding by a court of competent jurisdiction that any part or provision of this Agreement is unconstitutional or invalid shall not invalidate any other provision hereof.

XXV. PRIOR AGREEMENTS

This Agreement supersedes any and all prior Agreements between the parties for solid waste disposal services.

CITY, by and through its Mayor, and GENESSE, by and through its Mayor, have duly executed this Agreement in duplicate originals, to be effective on the 1st day of October, 2023, notwithstanding the date executed by the Parties hereto.

CITY OF GENESSE, IDAHO:

CITY OF MOSCOW, IDAHO

John Hermann, Mayor

Arthur D. Bettge, Mayor

ATTEST:

ATTEST:

Debi Zenner, Genesse City Clerk

Laurie M. Hopkins, Moscow City Clerk

EXHIBIT “A”

**SCHEDULE OF REIMBURSEMENT
October 1, 2023 through September 30, 2028**

The City of Genesee (GENESSE) agrees to pay the City of Moscow (CITY) the amounts shown herein for Solid Waste Disposal, pursuant to this Agreement, and such being delivered to the Solid Waste Processing Facility by GENESSE’s collection franchisee or other person, or entity authorized by GENESSE.

1. Municipal Solid Waste Disposal (per ton):

FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
\$99.27	\$100.76	\$102.27	\$103.80	\$105.36

2. Non-Municipal Solid Waste Disposal (per ton):

FY 2024	FY 2025	FY 2026	FY 2027	FY2028
\$40.50	\$41.11	\$41.73	\$42.36	\$43.00

3. Mixed Municipal/Non-Municipal Solid Waste Disposal (per ton):

FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
\$70.04	\$71.10	\$72.17	\$73.26	\$74.36

4. Compostable Materials: No Charge

5. Recyclable Materials: No Charge

6. Tire Disposal (per ton): \$225.00 **Tires with Rims (each):** Additional \$2.20

7. Program Cost Rates: \$1.30 per month per billed COUNTY Collection Unit

This rate shall pay for unlimited access by individual GENESSE residents to the CITY Recycling Facility, Household Hazardous Waste Facility, Solid Waste Education, and individual access to the Solid Waste Processing Facility; provided, however, that individual access to the Solid Waste Processing Facility shall be assessed a ten dollar (\$10) per load “minimum fee” and shall be billed directly to the resident.

Fiscal year 2024 fee modification shall be effective October 1, 2023. The fee modification date shall be October 1 of each year (example: Fiscal year 2024 fee modification shall be effective October 1, 2023).

EXHIBIT "B"

FIRST AMENDMENT TO AGREEMENT FOR SOLID WASTE TRANSPORTATION AND DISPOSAL BETWEEN CITY OF MOSCOW, IDAHO AND FINLEY-BUTTES LIMITED PARTNERSHIP

THIS FIRST AMENDMENT TO AGREEMENT FOR SOLID WASTE TRANSPORTATION AND DISPOSAL BETWEEN CITY OF MOSCOW, IDAHO AND FINLEY-BUTTES LIMITED PARTNERSHIP (hereinafter "First Amendment"), is made and entered into this 19th day of December, 2022, by and between City of Moscow, Idaho, a municipal corporation of the State of Idaho, 206 East Third Street, Moscow, Idaho, 83843 (hereinafter "CITY"), and Finley-Buttes Limited Partnership, an Oregon limited partnership, (hereinafter "CONTRACTOR").

WITNESSETH:

WHEREAS, CONTRACTOR was selected to own, otherwise provide, and operate Facilities to accept CITY Acceptable Waste in loaded Trailers at CITY's designated Solid Waste Processing Facility (hereinafter "SWPF") and to Transport to and Dispose of that Acceptable Waste at the Disposal Site for CITY through an executed Agreement approved by City Council on October 7, 2019, approved by CONTRACTOR's Board of Directors as evidenced by the Unanimous Written Consent of the General Partner of Finley-Buttes Limited Partnership dated October 16, 2019 and said Agreement was executed by the Parties on November 4, 2019, see Attachment "A" (hereinafter "Agreement"); and

WHEREAS, the Agreement provides for modification upon written agreement signed by the Parties (Article 2, Section 2.13); and

WHEREAS, the Agreement permits CITY, at CITY's sole discretion, to consider CONTRACTOR requests for reimbursements due to extraordinary fuel price increases (Article 8, Section 8.2 A.(4)); and

WHEREAS, the Agreement allows for adjustment of a Service Fee or any other payment or fee at any time by mutual consent of the Parties (Article 8, Section 8.4. E); and

WHEREAS, CONTRACTOR requested fuel relief due to the unanticipated significant increases in diesel fuel costs and the fact that a portion of CONTRACTOR's cost is predicated on fuel usage to transport CITY waste two hundred fourteen (214) miles one way; and

WHEREAS, CITY has determined that the requested fuel relief is reasonable and appropriate and has previously granted fuel relief to CONTRACTOR's predecessor when similar fuel cost volatility occurred; and

WHEREAS, the proposed fuel relief adjustment contained herein provides a fair and predictable method of accounting for fuel cost volatility and provides for both reimbursement of excessive fuel expenses to CONTRACTOR when fuel prices exceed 15% of the adjusted base fuel index, and credits to CITY when fuel prices drop 15% below the adjusted base fuel index as described herein; and

FIRST AMENDMENT TO SOLID WASTE TRANSPORTATION AND DISPOSAL AGREEMENT
FINLEY-BUTTES LIMITED PARTNERSHIP

2022-203 PAGE 1 OF 4

WHEREAS, the Parties intend to modify the Agreement through this First Amendment to accommodate CONTRACTOR'S requested fuel adjustment;

NOW, THEREFORE, it is agreed, for and in consideration of the mutual covenants and promises between the Parties hereto, as follows:

Section 1. All matters stated above are found to be true and correct and are incorporated herein by reference as if copied in their entirety and shall be adopted with the following sections of this First Amendment.

Section 2. It has been determined that a fair and predictable method of accounting for fuel cost volatility is warranted and is in the best interests of both Parties.

Section 3. CITY shall apply fuel cost adjustments as a payment to CONTRACTOR, or CONTRACTOR will apply the fuel cost adjustment as a credit to CITY, when the index changes as defined below.

1. The index to be used when considering fuel price adjustments pursuant to this First Amendment shall be the U.S. Energy Information Administration (EIA) https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=pet&s=emd_epd2d_pte_r5xca_dpg&f=m, Monthly West Coast (PADD 5) Except California No 2 Diesel Retail Prices (Dollars per Gallon).
2. The Current Fuel Index (CFI) shall be the current month's average price per gallon as reported by EIA as referenced herein. The monthly average CFI, shall be used to compute fuel adjustments for the same month that services are performed for CITY. (i.e. October CFI used to compute fuel adjustment for October services). Fuel adjustments will be calculated by the 15th of the month for the prior month's services, and any payments or credits will be applied to the subsequent month's bill (i.e. September's adjustment will be calculated on October 15th and any payments or credits will be applied to October's billing).
3. Fuel adjustments provided by this First Amendment shall be retroactively effective to January 1, 2022, and shall continue thereafter through the duration of the term of the Agreement.
4. Effective January 1, 2022, the initial base fuel index (BFI) shall be Three Dollars and Thirty-One Cents (\$3.31) per gallon. The BFI shall thereafter be adjusted annually on October 1st of each year beginning October 1, 2022 to establish the Adjusted Base Fuel Index (ABFI) by an amount equal to forty percent (40%) of the annual Consumer Price Index (CPI) as published in January of each year by the United States, Bureau of Labor Statistics (Index I.D. CUUR0000SA0, All Urban Consumers, U.S. All items, 1982-84 = 100) as described herein.

$$ABFI = BFI * (CPI \text{ annual adjustment} * 40\%)$$

Where:

BFI = Base Fuel Index

CPI Annual Adjustment = ((current year annual average CPI - prior year annual average CPI) / prior year annual average CPI)
ABFI = adjusted base fuel index

5. A fuel price adjustment will only be made when the CFI varies by more than fifteen percent (15%) from the ABFI. Payments and credits shall be computed as follows:

Contractor payment if CFI is greater than 115% of ABFI:
 $FPA = (CFI - (ABFI * 115\%)) * Q * T$

City credit if CFI is less than 85% of ABFI:
 $FPA = (CFI - (ABFI * 85\%)) * Q * T$

Where:
FPA = fuel price adjustment
Q = 92.44 gallons per trip
T = monthly trips

Section 4. All other terms and conditions of the Agreement that are not amended by this First Amendment shall remain in full force and effect.

Section 5. This First Amendment was adopted by the City Council of the City of Moscow, Idaho and Approved by the Mayor of the City of Moscow on a regularly scheduled meeting dated November 5, 2022.

IN WITNESS WHEREOF, said CONTRACTOR and CITY have caused this First Amendment to be executed on the day and year first above written.

CONTRACTOR

By: Brian Evola
Brian Evola
Finley-Buttes Limited Partnership



CITY

City of Moscow, Idaho

By: Arthur D. Bettge
Arthur D. Bettge, Mayor

ATTEST

Taylor Riedner
Taylor Riedner, Deputy City Clerk

Approved As To Form:
Mia Bautista
Mia Bautista, City Attorney

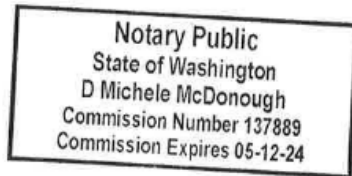
FIRST AMENDMENT TO SOLID WASTE TRANSPORTATION AND DISPOSAL AGREEMENT
FINLEY-BUTTES LIMITED PARTNERSHIP

PAGE 3 OF 4

ACKNOWLEDGMENT

STATE OF Washington) ss:
County of Clark)

On this 12th day of December, 2022, before me, a Notary Public in and for said State, appeared Brian Evola, known to me to be the person named above and acknowledged that he executed the foregoing document as the duly authorized representative for Finley-Buttes Limited Partnership.



D. Michele McDonough
Notary Public for State of Washington
Residing at Clark County
My commission expires: 05-12-24

**SOLID WASTE DISPOSAL AGREEMENT
BETWEEN CITY OF TROY, IDAHO AND
CITY OF MOSCOW, IDAHO**

THIS SOLID WASTE DISPOSAL AGREEMENT BETWEEN CITY OF TROY, IDAHO AND CITY OF MOSCOW, IDAHO (hereinafter "Agreement"), made and entered into this ____ day of _____, 2023, by and between City of Troy, Idaho, a municipal corporation of the State of Idaho, 519 South Main Street, Troy, Idaho, 83871 (hereinafter "TROY"), and the City of Moscow, Idaho, a municipal corporation of the State of Idaho, 206 East Third Street, Moscow, Idaho, 83843 (hereinafter "CITY").

W I T N E S S E T H:

WHEREAS, CITY manages and operates a solid waste and recycling processing and disposal system in Latah County; and

WHEREAS, CITY has offered to provide TROY with solid waste and recycling services and related programs in accordance with Federal, State of Idaho, and local statutes, laws, rules, regulations, and ordinances as defined herein; and

WHEREAS, TROY finds that CITY is qualified and capable to provide such services to TROY; and

WHEREAS, CITY and TROY have an existing solid waste disposal agreement that was executed on February 22, 2017, and which expires on September 30, 2023; and

WHEREAS, TROY wishes for CITY to continue to provide TROY with solid waste processing and disposal and recycling processing services; and

WHEREAS, in 2021, CITY conducted a Sanitation Rate Study to determine the cost of solid waste processing and disposal services and necessary annual adjustments; and

WHEREAS, in 2022, CITY amended its agreement with Finley-Buttes Limited Partnership (CITY's municipal solid waste (MSW) transport and disposal contractor) to provide fuel cost relief through a fuel adjustment formula as set forth in Exhibit "B" attached hereto and incorporated herein;

THEREFORE, CITY and TROY hereby enter into an Agreement for disposal and/or recycling of Acceptable Waste, Demolition/Inert Waste, Compostable Waste and recyclable materials received from residences, businesses, institutions and industries within TROY and for programs related thereto, and for and in consideration of the promises and covenants contained herein, CITY hereby agrees to and with TROY to undertake and execute, for an agreed upon consideration, the herein described work, in a good, substantial and workmanlike manner.

I. DEFINITIONS

For purposes of interpretation of the terms of this Agreement, the following terms, phrases and derivations shall have the following meanings. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The term "shall" is always mandatory and not merely directory.

- A. **ACCEPTABLE WASTE:** That portion of solid waste that is normally disposed of and originating from residential dwellings, businesses, industrial and commercial establishments which consists of household wastes from private residences, commercial waste which originates in wholesale, retail or service establishments such as restaurants, stores, markets, theaters, hotels and warehouses, and institutional waste material originating in schools, hospitals, research institutions and public buildings. Such Acceptable Waste shall include tires, metals and white goods. In no event shall Acceptable Waste include any Hazardous Waste, Infectious Waste or any Unacceptable Waste.
- B. **COLLECTION FRANCHISEE:** The person, persons, corporation or partnership holding a contract and/or franchise issued or granted by TROY authorizing such person, persons, corporation or partnership to operate, conduct or maintain a solid waste collection and disposal system upon or over any highways, streets, roads, alleys and public ways of TROY.
- C. **COLLECTION UNIT:** A TROY resident and/or business receiving solid waste collection services at a place of residence or place of business located within TROY.
 - 1. **Individual Unit:** A dwelling within TROY occupied by a person or group of persons. An individual unit shall be deemed occupied when either occupied or generating solid waste. Each unit within an apartment building, condominium, duplex or mobile home park shall be treated as an individual residential unit, unless served by a mechanical container or compactor.
 - 2. **Commercial Unit:** Each space within TROY occupied by an individual business. A business shall be deemed occupied when either occupied or generating solid waste.
- D. **COMPOSTABLE WASTE:** That Acceptable Waste that has been accepted at the Designated Waste Processing Facility for composting. Such Compostable Waste shall conform to all statutes, rules and regulations of any governmental regulatory agency which pertains to composting.
- E. **DEMOLITION/INERT WASTE:** That Acceptable Waste that has been accepted at the Designated Waste Processing Facility for placement in the demolition/inert landfill. Such Demolition/Inert Waste shall conform to all statutes, rules and regulations of any governmental regulatory agency which pertains to demolition/inert landfilling.

- F. DESIGNATED WASTE PROCESSING FACILITY: The facility or site designated by CITY where Acceptable Waste is compacted, incinerated, landfilled, composted, transferred or otherwise disposed of or treated prior to disposal.
- G. DIRECTOR OF SOLID WASTE SERVICES: The Moscow CITY Supervisor or such other person or persons so designated by the Moscow CITY Supervisor.
- H. HAZARDOUS WASTE: Any chemical, compound, mixture, substance or article which is designated by federal law or regulation, Idaho law or regulation or regulation of any other state when applicable (such as in the case of solid waste exported to or through another state for ultimate disposal) to be 'hazardous', 'dangerous', or 'extremely dangerous'. Hazardous Waste includes any material by reason of its composition or characteristics, is:
1. Toxic or hazardous waste as defined in either the Solid Waste Disposal Act, 42 U.S.C. Section 6901 *et seq*, as replaced, amended, expanded or supplemented, or any laws of similar purpose or effect, and such policies or regulations thereunder, or under relevant state law as replaced, amended, expanded or supplemented, or any laws of similar purpose or effect, and any rules, regulations or policies thereunder, or
 2. Special nuclear or by-products material within the meaning of the Atomic Energy Act of 1954, 42 U.S.C. Section 2011 *et seq*, as replaced, amended, expanded or supplemented, or any laws of similar purpose or effect, and such policies or regulations thereunder, or under relevant state law as replaced, amended, expanded or supplemented, or any laws of similar purpose or effect, and any rules, regulations or policies thereunder; or
 3. Other material which any governmental agency or unit having appropriate jurisdiction shall determine from time to time is harmful, toxic or dangerous or otherwise ineligible for transfer through, transportation by, or disposal from the site; or
 4. Any material which would result in residue being designated as hazardous waste under the above; or
 5. Any waste falling within the definition contained in Idaho Code § 39-4403 (8).
- I. HOUSEHOLD SOLID WASTE: That Acceptable Waste, including garbage or trash produced by ordinary residential units, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas, which fits into a bag, manual container or bundle less than four feet (4') in length. Does not include bulky, Infectious Waste, Hazardous Waste, Unacceptable Waste or any type of solid waste that is not normally collected by TROY's collection Franchisee at individual or commercial units.
- J. INFECTIOUS WASTE: Any material, chemical, compound, mixture, substance or article known to be infectious by the generator or producer or which is designated by the United States Environmental Protection Agency or other appropriate agency of the Federal

Government or the State of Idaho to be "infectious" as that term is commonly defined by or pursuant to law.

- K. **PRODUCER:** Any person, business or other entity which produces solid waste within TROY.
- L. **PUTRESCIBLE WASTE:** Solid waste which has the capacity to become rotten or foul.
- M. **RATE MODIFICATION DATE:** The date whereby all rate adjustments shall become effective. The rate modification date shall be October 1 of each year this Agreement is in force.
- N. **RESOURCE RECOVERY:** The process, including recycling, of obtaining useful material or energy resources from solid waste.
- O. **TRANSFER STATION:** The transfer, processing and transportation facility which has been designated by CITY for the purpose of transferring, processing and/or transporting Transport Waste.
- P. **TRANSPORT WASTE:** That Acceptable Waste which has been accepted at the Designated Waste Processing Facility for loading into transport vehicles for transport to an Ultimate Disposal Site. Such Transport Waste shall conform to the rules of, and be acceptable to, the Ultimate Disposal Site.
- Q. **ULTIMATE DISPOSAL SITE:** Any disposal site chosen by CITY which may ultimately receive Transport Waste from the Designated Waste Processing Facility.
- R. **UNACCEPTABLE WASTE:** That portion of the solid waste such as, but not limited to, explosives, pathological and biological waste, Infectious Waste, Hazardous Waste (except as deemed subject to the Household Hazardous Waste Program as defined in this Agreement), radioactive materials, foundry sand, cesspool waste, human remains, industrial process wastes, motor vehicles (including major motor vehicle parts such as transmissions, rear ends, springs and fenders), agricultural and farm machinery and equipment, marine vessels and major parts thereof or any other large type of machinery or equipment, or that which in the reasonable judgment of the Director may present a substantial endangerment to health or safety, or has a reasonable possibility of adversely affecting the operation of the Designated Waste Processing Facility or the acceptance of Transport Waste by the Ultimate Disposal Site.
- S. **WHITE GOODS.** Appliances such as refrigerators, ranges, water heaters, freezers, unit air conditioners, washing machines, dishwashers, clothes dryers, and other similar domestic and commercial large appliances.

II. SCOPE OF WORK

- A. SERVICE: CITY shall furnish, manage and maintain a system of processing, transportation, and disposal and/or recycling of Acceptable Waste as described herein. CITY shall further provide access to CITY's Designated Waste Processing Facility, Recycling Center, Household Hazardous Waste Program and Solid Waste Education Program to the residents of TROY as provided herein. These services shall include all supervision, materials, equipment, labor and all other items necessary to satisfy the terms of this Agreement.
- B. ACCEPTANCE OF ACCEPTABLE WASTE: CITY shall accept all Acceptable Waste delivered to its Designated Waste Processing Facility by TROY's Collection Franchisee and/or by individual residents of TROY, provided all tipping fees associated with such acceptance are paid. CITY shall provide for the processing of said Acceptable Waste, including landfilling, composting, recycling and/or hauling of said Acceptable Waste (Transport Waste) to the Ultimate Disposal Site.
- C. ACCEPTANCE OF RECYCLABLE MATERIALS: CITY shall accept, process and provide for ultimate disposal of certain recyclable materials delivered to the CITY's Recycling Center by TROY's Collection Franchisee or the individual residents of TROY, provided all tipping fees associated with such acceptance are paid. The types of materials to be accepted at CITY Recycling Center, the amount of money to be paid, if any, for recyclable materials and the types of recyclable materials upon which such money will be paid shall be the sole decision of CITY. Provided, that TROY's Collection Franchisee, other persons authorized by TROY to operate a recycling collection business, or any other person operating a recycling collection business shall not be paid for recyclable materials collected and/or delivered to CITY's Recycling Center. Provided further, that TROY and/or residents of TROY may arrange for the processing of such recyclable materials through any other public or private entity.
- D. HOUSEHOLD HAZARDOUS WASTE PROGRAM: CITY shall provide access to CITY's Household Hazardous Waste Collection Facility to all residents of TROY. The types of materials to be accepted pursuant to such Household Hazardous Waste Collection program and the operation of such program shall be the sole decision of CITY, upon consultation with TROY.
- E. SOLID WASTE EDUCATION PROGRAM: CITY shall include TROY in any and all solid waste education programs established by CITY.
- F. INFECTIOUS WASTE AND POTENTIALLY HARMFUL WASTES:
 - 1. CITY may provide, but is not obligated to provide, disposal programs for Infectious Waste or potentially harmful wastes. In the event that CITY elects to provide such program(s), CITY shall handle such Infectious Waste and potentially harmful wastes in a manner consistent with all applicable regulations.
 - 2. Producers of such wastes shall arrange with CITY, at Producers own expense, for the disposal of such wastes and the charges therefor, and the costs of disposing of such wastes shall be set by CITY.

G. **UNACCEPTABLE WASTE:** TROY shall not permit its Collection Franchisee or any other person to place Unacceptable Waste into a collection vehicle or container. TROY shall implement a program of training and procedure which is designed to prevent the placing of Unacceptable Waste into collection vehicles or containers. In the event that TROY's Collection Franchisee or any other person delivers unacceptable waste to the Designated Waste Processing Facility, CITY shall, at CITY's sole option, either:

1. Dispose of such Unacceptable Waste in a legally proper manner, and shall charge TROY for all costs thereof, plus actual reasonable administrative charges not to exceed fifteen percent (15%) of such costs; or
2. Reject such Unacceptable Waste.

III. DESIGNATION OF ULTIMATE DISPOSAL SITE(S)

The Parties understand and agree that CITY shall have the sole and exclusive right to designate the location or locations to which solid waste will be transported for processing and ultimate disposal. Provided that CITY shall consult with TROY and seek input regarding the designation of said ultimate disposal site and shall in good faith consider such input.

IV. HOLIDAYS

The following shall be holidays for purpose of this Agreement:

New Year's Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Day

CITY may decide to observe any or all of the above listed holidays by suspension of disposal or recycling services on a holiday, but such decision in no manner relieves CITY of its obligation to provide such services on the next regularly scheduled service day.

V. COMPLAINTS

All complaints regarding CITY's performance of this Agreement shall be made through TROY to the Director of Solid Waste Services and shall be given prompt and courteous attention. Complaints made directly to CITY from producers in TROY shall be given prompt and courteous attention. CITY shall investigate and respond to such complaints and shall inform TROY in a timely manner of the nature of such complaints and any remedial action taken in response to such complaints.

VI. NOTIFICATION

TROY shall notify all producers to be served hereunder about complaint procedures, rates, fees, regulations, schedules, and changes in the operation of the disposal and or/recycling system by means of press releases and/or publication of pamphlets and/or other means as elected by TROY, and through at least one (1) annual mailing per year. The cost of such notification shall be the responsibility of TROY.

VII. POINT OF CONTACT

All notices between CITY and TROY shall be directed by CITY to the Mayor of TROY, P O Box 595, Troy, Idaho, 83871, and by TROY to CITY via the Director of Solid Waste Services, at P O Box 9203, Moscow, Idaho, 83843.

VIII. SALVAGE RIGHTS

CITY shall have the full and exclusive right to all salvageable materials when such materials are accepted at the Designated Waste Processing Facility or Recycling Center pursuant to this Agreement, and CITY shall have the sole right to any and all funds received from the sale of said salvageable materials. Salvaging or scavenging by TROY, its Collection Franchisee(s), or any of its employees or agents after delivery to said Solid Waste Processing Facility or Recycling Center is prohibited.

IX. INSURANCE

- A. CITY shall at all times during the term of this Agreement, maintain, or cause its franchisees to maintain in full force and effect Employer's Liability, Workmen's Compensation, Public Liability and Property Damage insurance, including contractual liability coverage. Additionally, at all times during the term of this Agreement, TROY shall obtain and maintain, or cause its Collection Franchisee to obtain and maintain in full force and effect, public liability insurance and property damage insurance, including contractual liability coverage in the amounts of one million dollars (\$1,000,000.00) per occurrence, and two million dollars (\$2,000,000.00) aggregate. All insurance shall be provided before commencement of work hereunder. CITY and TROY shall annually furnish the other with certificates of insurance or other evidence satisfactory to the other that such insurance has been procured and is in force. Said certificates shall contain the following express provisions:

"This is to certify that the policies of insurance described herein have been issued to the insured for whom this certificate is executed and are in force at this time. In the event of cancellation or material change in a policy affecting the certificate holder, thirty (30) days prior written notice of said cancellation or change shall be provided to the certificate holder."

- B. For purposes of this Agreement, CITY shall carry, and/or shall cause its franchisee(s) or agents to carry, the following types of insurance in at least the limits specified below:

<u>COVERAGE</u>	<u>LIMITS OF LIABILITY</u>
Workmen's Compensation	Statutory
Employer's Liability	\$1,000,000
General Liability	\$1,000,000
except automobile (bodily injury and/or property damage)	each occurrence/ \$2,000,000 aggregate
Automobile bodily injury and/or property damage liability, combined single limit	\$1,000,000 each occurrence

All coverage subject to policy conditions

- C. As an alternative to the above, CITY may, with express written permission of TROY, provide the above public liability and property coverage under a plan of self-insurance. Each insurance policy with respect to public liability insurance may provide for self-insured retention of an amount of two hundred and fifty thousand dollars (\$250,000.00) with the result that CITY is its own insurer to that extent and with the requirement that CITY provides TROY with such evidence of financial responsibility as deemed necessary by TROY.

X. INTERRUPTION OF SERVICE

- A. Interruption of service shall mean that period of time during which services to be provided by CITY pursuant to this Agreement are interrupted, discontinued or substantially reduced, except as excused hereunder, for a period of five (5) consecutive days exclusive of Sundays and Holidays as defined herein; or after the expiration of five (5) days after notice, in accordance with the procedures required herein, is provided to CITY by TROY that TROY is terminating this Agreement because of a breach or default on the part of CITY and until such time as other arrangements can be made by TROY for other such services.
- B. TROY shall have the right to contract with another person, entity or corporation to provide the services set forth herein in the event of an interruption of service by CITY, for the duration of such interruption of service. In the event of interruption of service, all payments to CITY shall be suspended. During the period of such interruption of service, CITY shall be liable to TROY for the reasonable costs of providing such services less the amount of payment TROY would have been liable to make to CITY for providing such services. TROY shall document the actual reasonable costs of providing such services during such interruption of service. CITY shall not be liable for costs which are not supported by such documentation.

- C. In the event that such interruption of service continues for a period of thirty (30) consecutive days, after the expiration of the 30th day, either TROY or CITY may terminate this Agreement. Termination shall be effective not less than one hundred fifty (150) days after service of the notice of termination upon the non-terminating Party. In the event of such termination by CITY, the liability of CITY to TROY shall be limited to the reasonable increased costs (documented as provided herein) of providing such services during such interruption of service prior to such termination.

XI. BASIS AND METHOD OF PAYMENT

- A. Reimbursement. TROY shall pay CITY in accordance herewith the amounts set forth in Exhibit "A" for each service. TROY shall also reimburse CITY for any fuel surcharges incurred on behalf of TROY in accordance with the fuel adjustment agreement between CITY and Finley-Buttes Limited Partnership attached hereto as Exhibit "B". TROY's pro rata share of any fuel surcharge shall be calculated by dividing TROY's tonnage processed within the billing period by the total tonnage processed within the billing period. Should CITY receive a credit in accordance with fuel adjustment agreement, CITY shall calculate and provide TROY with credit in the same manner. The rates specified shall include all costs, fees and other expenses of CITY associated with the performance of its obligations hereunder, including those costs, if any, associated with (a) tipping fees at the Designated Waste Processing Facility; (b) transport to the Ultimate Disposal Site; (c) disposal fees at the Ultimate Disposal Site; and (d) program area costs as shown at Exhibit "A".
- B. Modification of Rates.
1. Annual Rate Adjustment. The rates for services provided under this agreement shall be escalated annually by one point five percent (1.5%) effective upon October 1 of each year of the initial term as shown in Exhibit "A". Rates beyond the initial five (5) year term shall be determined through future sanitation rate studies and shall be adjusted prior to the commencement of any future term extension.
 2. CITY's Request.
 - a. CITY shall have the right to petition TROY at any time for additional fee adjustments on the basis of unusual changes in the cost of operations i.e., revised federal and State of Idaho laws affecting this Agreement, which require mandatory compliance by the CITY resulting in increased operating costs to CITY, (as proven by full documentation of such increased operating costs as requested by TROY). All such requests shall be fully developed setting forth the changes requested, existing costs, summary of estimated change in costs and the amount of fee change requested. TROY shall respond to such requests within thirty (30) days. If the Parties are unable to reach agreement on a proposed rate adjustment, either Party may invoke the provisions of paragraph B(4), below.

- b. TROY understands that the cost of CITY's operations and services to be provided hereunder are subject to certain agreements (i.e., a Franchise Agreement and Hauling and Disposal Agreement). TROY has had the opportunity to review and analyze such agreements. CITY shall have the right to petition for a fee adjustment from TROY, and TROY shall be obligated to grant such fee adjustment, when such adjustment is made by CITY in response to a fee adjustment required by CITY's contractors pursuant to such agreements. All such requests shall be fully developed setting forth the changes requested, existing costs, summary of estimated change in costs and the amount of fee change requested. TROY shall respond to such requests within thirty (30) days. All fee adjustments made pursuant to this Section XI.B.2.b. shall be limited to TROY's pro-rata share of the actual fee adjustment(s) required of CITY.
3. TROY's Request. TROY may petition CITY for a change in either the level or nature of the service provided, and the resulting proposed fee adjustment. The notice shall include a listing by TROY of the type or nature of documentation, analysis or audit it is relying upon in support of the proposed change. Within sixty (60) days following receipt of such a request, unless some other time period is mutually agreed to by the Parties, CITY shall notify TROY as to whether it agrees with the modification of level and/or nature of service and/or the fee adjustment. Nothing herein shall be construed to require CITY to consent to such change in the nature and/or level of service. In the event CITY does not agree with TROY's fee adjustment, it shall also provide TROY with copies of all documentation, analysis or audit, on which CITY relies with CITY's written response. If CITY agrees with the fee adjustment, such adjustment will become effective upon TROY giving written notice to CITY to implement the change in the level and/or nature of service. In the event that TROY does not implement such changes in the nature and/or level of service (after CITY has agreed to such changes), TROY shall reimburse CITY for its costs, plus actual reasonable administrative charges not to exceed fifteen percent (15%) of such costs, incurred in responding to TROY's request for such adjustment. It is further acknowledged that this paragraph shall not operate so as to terminate the material provisions and intent of this Agreement; that is, CITY shall provide the solid waste disposal services set forth herein to TROY during the term of this Agreement while deciding on TROY's petition for change.
4. Arbitration of Disputes. In the event that the Parties cannot agree upon compensation for the work to be performed, the Parties agree that such a dispute shall be subject to binding arbitration pursuant to the rules of the Uniform Arbitration Act. The Parties shall mutually select a disinterested, non-local arbitrator. In the event the Parties are unable to mutually agree, each Party shall designate a disinterested, non-local individual and these two (2) designees shall then select the arbitrator. All designations of arbitrator or designee shall occur within ten (10) days of notice of dispute being delivered by one (1) Party to the other, and designees shall select the arbitrator within ten (10) days of their designation. The decision of the arbitrator shall be binding on both Parties. The non-prevailing Party, as determined by the arbitrator, shall pay all costs of the arbitration and the prevailing Party shall be awarded its reasonable costs

and reasonable attorney fees incurred in participating in such arbitration, said costs and attorney fees shall be limited to the amount of ten thousand dollars (\$10,000.00).

5. Effective Date. The fee adjustments contemplated in subparagraphs (2) and (3) above, shall become effective on the date(s) that the changes in service commence, or on the date such contractual rates change.
 6. Emergency Services. Should additional services be required in an emergency, above and beyond those contemplated in this Agreement, TROY may order reasonable delivery of services and TROY shall pay the verifiable costs of such services, plus actual reasonable administrative charges not to exceed fifteen percent (15%) of such costs.
- C. Payment. CITY shall be responsible for billing TROY monthly for the services set forth herein. TROY shall remit payment to CITY by the 20th day of each month following receipt of CITY's billing. In the event that TROY fails to remit payment to CITY by the 20th day of each month for such billing, TROY shall pay to CITY, in addition to the amount of the billing, a late fee in the amount of one percent (1%) of the amount of the billing per day beyond the due date. In addition to this late fee, in the event that TROY fails to remit payment to CITY within fourteen (14) days from the due date, CITY may, in its discretion, without penalty or determination that TROY is in breach of this Agreement, suspend its obligations and services to be provided hereunder until such charges are paid.

XII. TITLE TO WASTE

Title to all Acceptable Waste accepted at CITY's Designated Waste Processing Facility or Recycling Center, shall pass to CITY when so accepted. Title to Hazardous Wastes, potentially harmful wastes, Infectious Wastes or other Unacceptable Waste shall not vest with CITY, but shall remain in the Producer. TROY further agrees that it shall have the responsibility to identify the Producer of such wastes.

XIII. WAIVER

The failure of TROY or CITY to insist on strict performance of any of the terms and conditions hereof shall not be deemed a waiver of the rights or remedies that TROY or CITY may have regarding that specific instance, and shall not be deemed a waiver of any subsequent breach or default in any of the terms and conditions hereof. Making or receiving payments pursuant to this Agreement during the existence of a dispute shall not be deemed to and shall not constitute a waiver of any of the claims or defenses of the Party making such payment.

XIV. ADHERENCE TO LAWS

CITY and TROY shall at all times comply with and adhere to applicable laws governing the performance of the services described herein. Non-compliance with applicable statutes, rules and regulations by CITY or TROY shall act as a breach of this Agreement and shall subject the non-complying Party to liability therefore. CITY and TROY shall report violations of such laws as soon as practicable.

XV. RECORDS AND INSPECTION

A. Records

CITY shall maintain such records as may be specified herein or may be necessary to document the quantity of solid waste accepted and processed in the performance of this Agreement separately from that solid waste received by CITY pursuant to any other agreement with any governmental entity, business or person and to document the time and date of performance of services hereunder. Actual scale records shall be utilized in determining the quantity of solid waste collected and transported hereunder unless the Parties hereafter agree to use a system of estimation. Such actual scale weights shall be obtained utilizing the scales maintained at the Designated Waste Processing Facility. CITY shall make all documents relating to the performance of work hereunder, including scale records, available to TROY within fourteen (14) working days of receiving written notice detailing the documents requested. This time period may be extended where extenuating circumstances exist. Should TROY desire that records be maintained other than as provided above, TROY may petition CITY to cause such records to be maintained, and CITY, in its sole discretion, may cause such records to be maintained, provide that the cost of maintaining such records shall be borne by TROY. Further the Parties agree that CITY shall provide TROY, with each monthly billing, the following information as to the solid waste received and processed hereunder during the preceding month.

1. Tonnage of Acceptable Waste broken down into categories of:
 - a. Transport Waste;
 - b. Inert/Demolition/Compost Waste;
 - c. Recyclable materials received from TROY's collection franchisee.
2. The number of White Goods accepted at the Designated Waste Processing Facility, including the names and addresses of the Producers of such White Goods. Provided that any additional cost to CITY incurred in providing such information shall be borne by TROY.

B. Inspection

TROY reserves the right to conduct on-site inspections of CITY's operations (including, without limitation, the actual weighing of solid waste) without notice and at reasonable times and in a reasonable manner. The costs of such inspections, including any increase in CITY's cost of operations as a result of accommodating such inspections shall be borne by TROY.

CITY shall furnish TROY with all requested information relating to such work, provided the costs of providing such information shall be borne by TROY.

XVI. JURISDICTION AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho, and venue shall be in the District Court of Latah County.

XVII. BINDING ON SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors and permitted assigns.

XVIII. DELAYS IN CARRYING OUT WORK

CITY shall not be held responsible by reason of any delay in the performance of this Agreement when such delay is primarily caused by some act of God, provided that in the case of delay caused by an act of God, CITY shall give notice to TROY (in writing, at the earliest possible time) of the causes of such delay. Such a delay shall not be considered to be an interruption of service as designated in Section X of this Agreement. Provided, that if such delay due to an act of God continues for a period of twenty (20) consecutive days, either Party may terminate this Agreement without liability to the other Party. Such termination shall be effective upon written notice provided to the other Party.

XIX. HOLD HARMLESS/INDEMNIFICATION

- A. The Parties are governmental entities subject to statutory and constitutional restrictions concerning the acceptance of liability. The Parties liabilities are further governed by the Idaho Tort Claims Act. It is the intention of the Parties that each will be responsible for its own acts and omissions and those of its officers and employees acting within the course and scope of their employment.
- B. Further, the Parties understand that the Idaho Tort Claims Act, Idaho Code § 6-903(2)(ii), states that each Party's liability is secondary to the obligation of an insurer or indemnitor, or other vehicle not owned or leased by the Party.

XX. TERM

This Agreement shall be in effect for five (5) years commencing on October 1, 2023, and ending September 30, 2028. The Parties may agree to one (1) additional five (5) year term extension ending September 30, 2033 and one (1) additional two (2) year term extension ending September 30, 2035. If either Party intends not to extend the terms beyond fiscal year 2028 or 2033, the Party shall notify the other in writing of this intent one hundred eighty (180) days prior to the expiration of the existing term.

XXI. WASTE FLOW/FLOW CONTROL

TROY shall enact and maintain in force and effect and use best efforts to enforce applicable ordinances to require all Acceptable Waste, excluding Recyclable Materials, produced within TROY to be delivered to the Designated Waste Processing Facility.

XXII. RESOLUTION OF DISPUTES

Any dispute arising as to the terms of this Agreement, excepting the compensation to be paid to CITY, as referenced in Section XI, shall be dealt with in the following manner, unless otherwise specified:

- A. The Party seeking resolution of a dispute under this Agreement shall provide the other Party with written notice of the specific nature of the dispute and the section of this Agreement relied on for its position;
- B. The Party receiving the notice shall respond in writing within five (5) working days as to what action it will take to resolve the dispute;
- C. If a dispute continues to exist, the Parties shall meet within ten (10) working days from the date of the receipt of the written response in an attempt to resolve the dispute. TROY shall be represented by its Mayor (and any other representatives it desires to have present), and CITY shall be represented by its Mayor (and any other representatives it desires to have present), in an attempt to resolve the dispute.
- D. Such resolution of the dispute as the Parties are able to agree upon shall be put in writing and signed by the representatives of each Party and shall become a part of this Agreement.
- E. If a dispute is not resolved through the foregoing procedures, either Party may seek satisfaction through a complaint filed in the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah, which shall be the exclusive forum agreed to by the Parties. (In any matter before the court, the remedy of specific performance shall be the preferred remedy.) In any action filed pursuant to this Agreement, costs and reasonable attorney fees shall be awarded by the court to the prevailing Party.
- F. Any time limits for action under this Agreement may be increased or decreased by mutual agreement of the Parties, said agreements to be in writing.

XXIII. SEVERABILITY

If any provision of this Agreement shall be declared illegal, void or unenforceable, the remaining provisions herein shall not be affected and shall remain in full force and effect.

XXIV. ENTIRE AGREEMENT

This Agreement and its Exhibit(s) constitute(s) the entire agreement and understanding between the Parties and it shall not be considered modified, altered, changed or amended in any respect unless done in accordance with this Agreement, reduced to writing, and signed by the Parties hereto. Any finding by a court of competent jurisdiction that any part or provision of this Agreement is unconstitutional or invalid shall not invalidate any other provision hereof.

XXV. PRIOR AGREEMENTS

This Agreement supersedes any and all prior Agreements between the parties for solid waste disposal services.

CITY, by and through its Mayor, and TROY, by and through its Mayor, have duly executed this Agreement in duplicate originals, to be effective on the 1st day of October, 2023, notwithstanding the date executed by the Parties hereto.

CITY OF TROY, IDAHO:

CITY OF MOSCOW, IDAHO

Steve Corr, Mayor

Arthur D. Bettge, Mayor

ATTEST:

ATTEST:

Sabrina Moyer, Troy City Clerk

Laurie M. Hopkins, Moscow City Clerk

EXHIBIT “A”

SCHEDULE OF REIMBURSEMENT October 1, 2023 through September 30, 2028

The City of Troy (TROY) agrees to pay the City of Moscow (CITY) the amounts shown herein for Solid Waste Disposal, pursuant to this Agreement, and such being delivered to the Solid Waste Processing Facility by TROY’s collection franchisee or other person, or entity authorized by TROY.

1. Municipal Solid Waste Disposal (per ton):

FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
\$99.27	\$100.76	\$102.27	\$103.80	\$105.36

2. Non-Municipal Solid Waste Disposal (per ton):

FY 2024	FY 2025	FY 2026	FY 2027	FY2028
\$40.50	\$41.11	\$41.73	\$42.36	\$43.00

3. Mixed Municipal/Non-Municipal Solid Waste Disposal (per ton):

FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
\$70.04	\$71.10	\$72.17	\$73.26	\$74.36

4. Compostable Materials: No Charge

5. Recyclable Materials: No Charge

6. Tire Disposal (per ton): \$225.00 **Tires with Rims (each):** Additional \$2.20

7. Program Cost Rates: \$1.30 per month per billed COUNTY Collection Unit

This rate shall pay for unlimited access by individual TROY residents to the CITY Recycling Facility, Household Hazardous Waste Facility, Solid Waste Education, and individual access to the Solid Waste Processing Facility; provided, however, that individual access to the Solid Waste Processing Facility shall be assessed a ten dollar (\$10) per load “minimum fee” and shall be billed directly to the resident.

Fiscal year 2024 fee modification shall be effective October 1, 2023. The fee modification date shall be October 1 of each year (example: Fiscal year 2024 fee modification shall be effective October 1, 2023).

EXHIBIT “B”

**FIRST AMENDMENT TO AGREEMENT FOR SOLID WASTE
TRANSPORTATION AND DISPOSAL BETWEEN CITY OF MOSCOW,
IDAHO AND FINLEY-BUTTES LIMITED PARTNERSHIP**

THIS FIRST AMENDMENT TO AGREEMENT FOR SOLID WASTE TRANSPORTATION AND DISPOSAL BETWEEN CITY OF MOSCOW, IDAHO AND FINLEY-BUTTES LIMITED PARTNERSHIP (hereinafter "First Amendment"), is made and entered into this 19th day of December, 2022, by and between City of Moscow, Idaho, a municipal corporation of the State of Idaho, 206 East Third Street, Moscow, Idaho, 83843 (hereinafter "CITY"), and Finley-Buttes Limited Partnership, an Oregon limited partnership, (hereinafter "CONTRACTOR").

W I T N E S S E T H :

WHEREAS, CONTRACTOR was selected to own, otherwise provide, and operate Facilities to accept CITY Acceptable Waste in loaded Trailers at CITY's designated Solid Waste Processing Facility (hereinafter "SWPF") and to Transport to and Dispose of that Acceptable Waste at the Disposal Site for CITY through an executed Agreement approved by City Council on October 7, 2019, approved by CONTRACTOR's Board of Directors as evidenced by the Unanimous Written Consent of the General Partner of Finley-Buttes Limited Partnership dated October 16, 2019 and said Agreement was executed by the Parties on November 4, 2019, see Attachment "A" (hereinafter "Agreement"); and

WHEREAS, the Agreement provides for modification upon written agreement signed by the Parties (Article 2, Section 2.13); and

WHEREAS, the Agreement permits CITY, at CITY's sole discretion, to consider CONTRACTOR requests for reimbursements due to extraordinary fuel price increases (Article 8, Section 8.2 A.(4)); and

WHEREAS, the Agreement allows for adjustment of a Service Fee or any other payment or fee at any time by mutual consent of the Parties (Article 8, Section 8.4. E); and

WHEREAS, CONTRACTOR requested fuel relief due to the unanticipated significant increases in diesel fuel costs and the fact that a portion of CONTRACTOR's cost is predicated on fuel usage to transport CITY waste two hundred fourteen (214) miles one way; and

WHEREAS, CITY has determined that the requested fuel relief is reasonable and appropriate and has previously granted fuel relief to CONTRACTOR's predecessor when similar fuel cost volatility occurred; and

WHEREAS, the proposed fuel relief adjustment contained herein provides a fair and predictable method of accounting for fuel cost volatility and provides for both reimbursement of excessive fuel expenses to CONTRACTOR when fuel prices exceed 15% of the adjusted base fuel index, and credits to CITY when fuel prices drop 15% below the adjusted base fuel index as described herein; and

FIRST AMENDMENT TO SOLID WASTE TRANSPORTATION AND DISPOSAL AGREEMENT
FINLEY-BUTTES LIMITED PARTNERSHIP

2022-203 PAGE 1 OF 4

WHEREAS, the Parties intend to modify the Agreement through this First Amendment to accommodate CONTRACTOR'S requested fuel adjustment;

NOW, THEREFORE, it is agreed, for and in consideration of the mutual covenants and promises between the Parties hereto, as follows:

Section 1. All matters stated above are found to be true and correct and are incorporated herein by reference as if copied in their entirety and shall be adopted with the following sections of this First Amendment.

Section 2. It has been determined that a fair and predictable method of accounting for fuel cost volatility is warranted and is in the best interests of both Parties.

Section 3. CITY shall apply fuel cost adjustments as a payment to CONTRACTOR, or CONTRACTOR will apply the fuel cost adjustment as a credit to CITY, when the index changes as defined below.

1. The index to be used when considering fuel price adjustments pursuant to this First Amendment shall be the U.S. Energy Information Administration (EIA) https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=p&s=emd_epd2d_pte_r5xca_dpg&f=m, Monthly West Coast (PADD 5) Except California No 2 Diesel Retail Prices (Dollars per Gallon).
2. The Current Fuel Index (CFI) shall be the current month's average price per gallon as reported by EIA as referenced herein. The monthly average CFI, shall be used to compute fuel adjustments for the same month that services are performed for CITY. (i.e. October CFI used to compute fuel adjustment for October services). Fuel adjustments will be calculated by the 15th of the month for the prior month's services, and any payments or credits will be applied to the subsequent month's bill (i.e. September's adjustment will be calculated on October 15th and any payments or credits will be applied to October's billing).
3. Fuel adjustments provided by this First Amendment shall be retroactively effective to January 1, 2022, and shall continue thereafter through the duration of the term of the Agreement.
4. Effective January 1, 2022, the initial base fuel index (BFI) shall be Three Dollars and Thirty-One Cents (\$3.31) per gallon. The BFI shall thereafter be adjusted annually on October 1st of each year beginning October 1, 2022 to establish the Adjusted Base Fuel Index (ABFI) by an amount equal to forty percent (40%) of the annual Consumer Price Index (CPI) as published in January of each year by the United States, Bureau of Labor Statistics (Index I.D. CUUR0000SA0, All Urban Consumers, U.S. All items, 1982-84 = 100) as described herein.

$$ABFI = BFI * (CPI \text{ annual adjustment} * 40\%)$$

Where:

BFI = Base Fuel Index

CPI Annual Adjustment = ((current year annual average CPI - prior year annual average CPI) / prior year annual average CPI)
ABFI = adjusted base fuel index

5. A fuel price adjustment will only be made when the CFI varies by more than fifteen percent (15%) from the ABFI. Payments and credits shall be computed as follows:

Contractor payment if CFI is greater than 115% of ABFI:
 $FPA = (CFI - (ABFI * 115\%)) * Q * T$

City credit if CFI is less than 85% of ABFI:
 $FPA = (CFI - (ABFI * 85\%)) * Q * T$

Where:
FPA = fuel price adjustment
Q = 92.44 gallons per trip
T = monthly trips

Section 4. All other terms and conditions of the Agreement that are not amended by this First Amendment shall remain in full force and effect.

Section 5. This First Amendment was adopted by the City Council of the City of Moscow, Idaho and Approved by the Mayor of the City of Moscow on a regularly scheduled meeting dated November 5, 2022.

IN WITNESS WHEREOF, said CONTRACTOR and CITY have caused this First Amendment to be executed on the day and year first above written.

CONTRACTOR

By: Brian Evola
Brian Evola
Finley-Buttes Limited Partnership



CITY

City of Moscow, Idaho

By: Arthur D. Bettge
Arthur D. Bettge, Mayor

ATTEST

Taylor Riedner
Taylor Riedner, Deputy City Clerk

Approved As To Form:
Mia Bautista
Mia Bautista, City Attorney

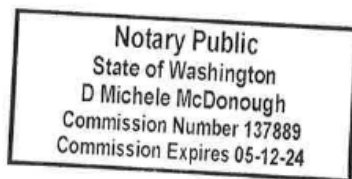
FIRST AMENDMENT TO SOLID WASTE TRANSPORTATION AND DISPOSAL AGREEMENT
FINLEY-BUTTES LIMITED PARTNERSHIP

PAGE 3 OF 4

ACKNOWLEDGMENT

STATE OF Washington) ss:
County of Clark)

On this 12th day of December, 2022, before me, a Notary Public in and for said State, appeared Brian Evola, known to me to be the person named above and acknowledged that he executed the foregoing document as the duly authorized representative for Finley-Buttes Limited Partnership.



D. Michele McDonough
Notary Public for State of Washington
Residing at Clark County
My commission expires: 05-12-24

**SOLID WASTE DISPOSAL AGREEMENT
BETWEEN CITY OF KENDRICK, IDAHO AND
CITY OF MOSCOW, IDAHO**

THIS SOLID WASTE DISPOSAL AGREEMENT BETWEEN CITY OF KENDRICK, IDAHO AND CITY OF MOSCOW, IDAHO (hereinafter "Agreement"), made and entered into this ____ day of _____, 2023, by and between City of Kendrick, Idaho, a municipal corporation of the State of Idaho, 808 Railroad Street, Kendrick, Idaho, 83537 (hereinafter "KENDRICK"), and the City of Moscow, Idaho, a municipal corporation of the State of Idaho, 206 East Third Street, Moscow, Idaho, 83843 (hereinafter "CITY").

W I T N E S S E T H:

WHEREAS, CITY manages and operates a solid waste and recycling processing and disposal system in Latah County; and

WHEREAS, CITY has offered to provide KENDRICK with solid waste and recycling services and related programs in accordance with Federal, State of Idaho, and local statutes, laws, rules, regulations, and ordinances as defined herein; and

WHEREAS, KENDRICK finds that CITY is qualified and capable to provide such services to KENDRICK; and

WHEREAS, CITY and KENDRICK have an existing solid waste disposal agreement that was executed on February 16, 2017, and which expires on September 30, 2023; and

WHEREAS, KENDRICK wishes for CITY to continue to provide KENDRICK with solid waste processing and disposal and recycling processing services; and

WHEREAS, in 2021, CITY conducted a Sanitation Rate Study to determine the cost of solid waste processing and disposal services and necessary annual adjustments; and

WHEREAS, in 2022, CITY amended its agreement with Finley-Buttes Limited Partnership (CITY's municipal solid waste (MSW) transport and disposal contractor) to provide fuel cost relief through a fuel adjustment formula as set forth in Exhibit "B" attached hereto and incorporated herein;

THEREFORE, CITY and KENDRICK hereby enter into an Agreement for disposal and/or recycling of Acceptable Waste, Demolition/Inert Waste, Compostable Waste and recyclable materials received from residences, businesses, institutions and industries within KENDRICK and for programs related thereto, and for and in consideration of the promises and covenants contained herein, CITY hereby agrees to and with KENDRICK to undertake and execute, for an agreed upon consideration, the herein described work, in a good, substantial and workmanlike manner.

I. DEFINITIONS

For purposes of interpretation of the terms of this Agreement, the following terms, phrases and derivations shall have the following meanings. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The term "shall" is always mandatory and not merely directory.

- A. **ACCEPTABLE WASTE:** That portion of solid waste that is normally disposed of and originating from residential dwellings, businesses, industrial and commercial establishments which consists of household wastes from private residences, commercial waste which originates in wholesale, retail or service establishments such as restaurants, stores, markets, theaters, hotels and warehouses, and institutional waste material originating in schools, hospitals, research institutions and public buildings. Such Acceptable Waste shall include tires, metals and white goods. In no event shall Acceptable Waste include any Hazardous Waste, Infectious Waste or any Unacceptable Waste.
- B. **COLLECTION FRANCHISEE:** The person, persons, corporation or partnership holding a contract and/or franchise issued or granted by KENDRICK authorizing such person, persons, corporation or partnership to operate, conduct or maintain a solid waste collection and disposal system upon or over any highways, streets, roads, alleys and public ways of KENDRICK.
- C. **COLLECTION UNIT:** A KENDRICK resident and/or business receiving solid waste collection services at a place of residence or place of business located within KENDRICK.
 - 1. **Individual Unit:** A dwelling within KENDRICK occupied by a person or group of persons. An individual unit shall be deemed occupied when either occupied or generating solid waste. Each unit within an apartment building, condominium, duplex or mobile home park shall be treated as an individual residential unit, unless served by a mechanical container or compactor.
 - 2. **Commercial Unit:** Each space within KENDRICK occupied by an individual business. A business shall be deemed occupied when either occupied or generating solid waste.
- D. **COMPOSTABLE WASTE:** That Acceptable Waste that has been accepted at the Designated Waste Processing Facility for composting. Such Compostable Waste shall conform to all statutes, rules and regulations of any governmental regulatory agency which pertains to composting.
- E. **DEMOLITION/INERT WASTE:** That Acceptable Waste that has been accepted at the Designated Waste Processing Facility for placement in the demolition/inert landfill. Such Demolition/Inert Waste shall conform to all statutes, rules and regulations of any governmental regulatory agency which pertains to demolition/inert landfiling.

- F. DESIGNATED WASTE PROCESSING FACILITY: The facility or site designated by CITY where Acceptable Waste is compacted, incinerated, landfilled, composted, transferred or otherwise disposed of or treated prior to disposal.
- G. DIRECTOR OF SOLID WASTE SERVICES: The Moscow CITY Supervisor or such other person or persons so designated by the Moscow CITY Supervisor.
- H. HAZARDOUS WASTE: Any chemical, compound, mixture, substance or article which is designated by federal law or regulation, Idaho law or regulation or regulation of any other state when applicable (such as in the case of solid waste exported to or through another state for ultimate disposal) to be 'hazardous', 'dangerous', or 'extremely dangerous'. Hazardous Waste includes any material by reason of its composition or characteristics, is:
1. Toxic or hazardous waste as defined in either the Solid Waste Disposal Act, 42 U.S.C. Section 6901 *et seq*, as replaced, amended, expanded or supplemented, or any laws of similar purpose or effect, and such policies or regulations thereunder, or under relevant state law as replaced, amended, expanded or supplemented, or any laws of similar purpose or effect, and any rules, regulations or policies thereunder, or
 2. Special nuclear or by-products material within the meaning of the Atomic Energy Act of 1954, 42 U.S.C. Section 2011 *et seq*, as replaced, amended, expanded or supplemented, or any laws of similar purpose or effect, and such policies or regulations thereunder, or under relevant state law as replaced, amended, expanded or supplemented, or any laws of similar purpose or effect, and any rules, regulations or policies thereunder; or
 3. Other material which any governmental agency or unit having appropriate jurisdiction shall determine from time to time is harmful, toxic or dangerous or otherwise ineligible for transfer through, transportation by, or disposal from the site; or
 4. Any material which would result in residue being designated as hazardous waste under the above; or
 5. Any waste falling within the definition contained in Idaho Code § 39-4403 (8).
- I. HOUSEHOLD SOLID WASTE: That Acceptable Waste, including garbage or trash produced by ordinary residential units, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas, which fits into a bag, manual container or bundle less than four feet (4') in length. Does not include bulky, Infectious Waste, Hazardous Waste, Unacceptable Waste or any type of solid waste that is not normally collected by KENDRICK's collection Franchisee at individual or commercial units.
- J. INFECTIOUS WASTE: Any material, chemical, compound, mixture, substance or article known to be infectious by the generator or producer or which is designated by the United States Environmental Protection Agency or other appropriate agency of the Federal

Government or the State of Idaho to be "infectious" as that term is commonly defined by or pursuant to law.

- K. **PRODUCER:** Any person, business or other entity which produces solid waste within KENDRICK.
- L. **PUTRESCIBLE WASTE:** Solid waste which has the capacity to become rotten or foul.
- M. **RATE MODIFICATION DATE:** The date whereby all rate adjustments shall become effective. The rate modification date shall be October 1 of each year this Agreement is in force.
- N. **RESOURCE RECOVERY:** The process, including recycling, of obtaining useful material or energy resources from solid waste.
- O. **TRANSFER STATION:** The transfer, processing and transportation facility which has been designated by CITY for the purpose of transferring, processing and/or transporting Transport Waste.
- P. **TRANSPORT WASTE:** That Acceptable Waste which has been accepted at the Designated Waste Processing Facility for loading into transport vehicles for transport to an Ultimate Disposal Site. Such Transport Waste shall conform to the rules of, and be acceptable to, the Ultimate Disposal Site.
- Q. **ULTIMATE DISPOSAL SITE:** Any disposal site chosen by CITY which may ultimately receive Transport Waste from the Designated Waste Processing Facility.
- R. **UNACCEPTABLE WASTE:** That portion of the solid waste such as, but not limited to, explosives, pathological and biological waste, Infectious Waste, Hazardous Waste (except as deemed subject to the Household Hazardous Waste Program as defined in this Agreement), radioactive materials, foundry sand, cesspool waste, human remains, industrial process wastes, motor vehicles (including major motor vehicle parts such as transmissions, rear ends, springs and fenders), agricultural and farm machinery and equipment, marine vessels and major parts thereof or any other large type of machinery or equipment, or that which in the reasonable judgment of the Director may present a substantial endangerment to health or safety, or has a reasonable possibility of adversely affecting the operation of the Designated Waste Processing Facility or the acceptance of Transport Waste by the Ultimate Disposal Site.
- S. **WHITE GOODS.** Appliances such as refrigerators, ranges, water heaters, freezers, unit air conditioners, washing machines, dishwashers, clothes dryers, and other similar domestic and commercial large appliances.

II. SCOPE OF WORK

- A. SERVICE: CITY shall furnish, manage and maintain a system of processing, transportation, and disposal and/or recycling of Acceptable Waste as described herein. CITY shall further provide access to CITY's Designated Waste Processing Facility, Recycling Center, Household Hazardous Waste Program and Solid Waste Education Program to the residents of KENDRICK as provided herein. These services shall include all supervision, materials, equipment, labor and all other items necessary to satisfy the terms of this Agreement.
- B. ACCEPTANCE OF ACCEPTABLE WASTE: CITY shall accept all Acceptable Waste delivered to its Designated Waste Processing Facility by KENDRICK's Collection Franchisee and/or by individual residents of KENDRICK, provided all tipping fees associated with such acceptance are paid. CITY shall provide for the processing of said Acceptable Waste, including landfilling, composting, recycling and/or hauling of said Acceptable Waste (Transport Waste) to the Ultimate Disposal Site.
- C. ACCEPTANCE OF RECYCLABLE MATERIALS: CITY shall accept, process and provide for ultimate disposal of certain recyclable materials delivered to the CITY's Recycling Center by KENDRICK's Collection Franchisee or the individual residents of KENDRICK, provided all tipping fees associated with such acceptance are paid. The types of materials to be accepted at CITY Recycling Center, the amount of money to be paid, if any, for recyclable materials and the types of recyclable materials upon which such money will be paid shall be the sole decision of CITY. Provided, that KENDRICK's Collection Franchisee, other persons authorized by KENDRICK to operate a recycling collection business, or any other person operating a recycling collection business shall not be paid for recyclable materials collected and/or delivered to CITY's Recycling Center. Provided further, that KENDRICK and/or residents of KENDRICK may arrange for the processing of such recyclable materials through any other public or private entity.
- D. HOUSEHOLD HAZARDOUS WASTE PROGRAM: CITY shall provide access to CITY's Household Hazardous Waste Collection Facility to all residents of KENDRICK. The types of materials to be accepted pursuant to such Household Hazardous Waste Collection program and the operation of such program shall be the sole decision of CITY, upon consultation with KENDRICK.
- E. SOLID WASTE EDUCATION PROGRAM: CITY shall include KENDRICK in any and all solid waste education programs established by CITY.
- F. INFECTIOUS WASTE AND POTENTIALLY HARMFUL WASTES:
 - 1. CITY may provide, but is not obligated to provide, disposal programs for Infectious Waste or potentially harmful wastes. In the event that CITY elects to provide such program(s), CITY shall handle such Infectious Waste and potentially harmful wastes in a manner consistent with all applicable regulations.
 - 2. Producers of such wastes shall arrange with CITY, at Producers own expense, for the disposal of such wastes and the charges therefor, and the costs of disposing of such wastes shall be set by CITY.

- G. **UNACCEPTABLE WASTE:** KENDRICK shall not permit its Collection Franchisee or any other person to place Unacceptable Waste into a collection vehicle or container. KENDRICK shall implement a program of training and procedure which is designed to prevent the placing of Unacceptable Waste into collection vehicles or containers. In the event that KENDRICK's Collection Franchisee or any other person delivers unacceptable waste to the Designated Waste Processing Facility, CITY shall, at CITY's sole option, either:
1. Dispose of such Unacceptable Waste in a legally proper manner, and shall charge KENDRICK for all costs thereof, plus actual reasonable administrative charges not to exceed fifteen percent (15%) of such costs; or
 2. Reject such Unacceptable Waste.

III. DESIGNATION OF ULTIMATE DISPOSAL SITE(S)

The Parties understand and agree that CITY shall have the sole and exclusive right to designate the location or locations to which solid waste will be transported for processing and ultimate disposal. Provided that CITY shall consult with KENDRICK and seek input regarding the designation of said ultimate disposal site and shall in good faith consider such input.

IV. HOLIDAYS

The following shall be holidays for purpose of this Agreement:

New Year's Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Day

CITY may decide to observe any or all of the above listed holidays by suspension of disposal or recycling services on a holiday, but such decision in no manner relieves CITY of its obligation to provide such services on the next regularly scheduled service day.

V. COMPLAINTS

All complaints regarding CITY's performance of this Agreement shall be made through KENDRICK to the Director of Solid Waste Services and shall be given prompt and courteous attention. Complaints made directly to CITY from producers in KENDRICK shall be given prompt and courteous attention. CITY shall investigate and respond to such complaints and shall inform KENDRICK in a timely manner of the nature of such complaints and any remedial action taken in response to such complaints.

VI. NOTIFICATION

KENDRICK shall notify all producers to be served hereunder about complaint procedures, rates, fees, regulations, schedules, and changes in the operation of the disposal and or/recycling system by means of press releases and/or publication of pamphlets and/or other means as elected by KENDRICK, and through at least one (1) annual mailing per year. The cost of such notification shall be the responsibility of KENDRICK.

VII. POINT OF CONTACT

All notices between CITY and KENDRICK shall be directed by CITY to the Mayor of KENDRICK, P O Box 195, Kendrick, Idaho, 83537, and by KENDRICK to CITY via the Director of Solid Waste Services, at P O Box 9203, Moscow, Idaho, 83843.

VIII. SALVAGE RIGHTS

CITY shall have the full and exclusive right to all salvageable materials when such materials are accepted at the Designated Waste Processing Facility or Recycling Center pursuant to this Agreement, and CITY shall have the sole right to any and all funds received from the sale of said salvageable materials. Salvaging or scavenging by KENDRICK, its Collection Franchisee(s), or any of its employees or agents after delivery to said Solid Waste Processing Facility or Recycling Center is prohibited.

IX. INSURANCE

- A. CITY shall at all times during the term of this Agreement, maintain, or cause its franchisees to maintain in full force and effect Employer's Liability, Workmen's Compensation, Public Liability and Property Damage insurance, including contractual liability coverage. Additionally, at all times during the term of this Agreement, KENDRICK shall obtain and maintain, or cause its Collection Franchisee to obtain and maintain in full force and effect, public liability insurance and property damage insurance, including contractual liability coverage in the amounts of one million dollars (\$1,000,000.00) per occurrence, and two million dollars (\$2,000,000.00) aggregate. All insurance shall be provided before commencement of work hereunder. CITY and KENDRICK shall annually furnish the other with certificates of insurance or other evidence satisfactory to the other that such insurance has been procured and is in force. Said certificates shall contain the following express provisions:

"This is to certify that the policies of insurance described herein have been issued to the insured for whom this certificate is executed and are in force at this time. In the event of cancellation or material change in a policy affecting the certificate holder, thirty (30) days prior written notice of said cancellation or change shall be provided to the certificate holder."

- B. For purposes of this Agreement, CITY shall carry, and/or shall cause its franchisee(s) or agents to carry, the following types of insurance in at least the limits specified below:

<u>COVERAGE</u>	<u>LIMITS OF LIABILITY</u>
Workmen's Compensation	Statutory
Employer's Liability	\$1,000,000
General Liability	\$1,000,000
except automobile (bodily injury and/or property damage)	each occurrence/ \$2,000,000 aggregate
Automobile bodily injury and/or property damage liability, combined single limit	\$1,000,000 each occurrence

All coverage subject to policy conditions

- C. As an alternative to the above, CITY may, with express written permission of KENDRICK, provide the above public liability and property coverage under a plan of self-insurance. Each insurance policy with respect to public liability insurance may provide for self-insured retention of an amount of two hundred and fifty thousand dollars (\$250,000.00) with the result that CITY is its own insurer to that extent and with the requirement that CITY provides KENDRICK with such evidence of financial responsibility as deemed necessary by KENDRICK.

X. INTERRUPTION OF SERVICE

- A. Interruption of service shall mean that period of time during which services to be provided by CITY pursuant to this Agreement are interrupted, discontinued or substantially reduced, except as excused hereunder, for a period of five (5) consecutive days exclusive of Sundays and Holidays as defined herein; or after the expiration of five (5) days after notice, in accordance with the procedures required herein, is provided to CITY by KENDRICK that KENDRICK is terminating this Agreement because of a breach or default on the part of CITY and until such time as other arrangements can be made by KENDRICK for other such services.
- B. KENDRICK shall have the right to contract with another person, entity or corporation to provide the services set forth herein in the event of an interruption of service by CITY, for the duration of such interruption of service. In the event of interruption of service, all payments to CITY shall be suspended. During the period of such interruption of service, CITY shall be liable to KENDRICK for the reasonable costs of providing such services less the amount of payment KENDRICK would have been liable to make to CITY for providing such services. KENDRICK shall document the actual reasonable costs of providing such services during such interruption of service. CITY shall not be liable for costs which are not supported by such documentation.

- C. In the event that such interruption of service continues for a period of thirty (30) consecutive days, after the expiration of the 30th day, either KENDRICK or CITY may terminate this Agreement. Termination shall be effective not less than one hundred fifty (150) days after service of the notice of termination upon the non-terminating Party. In the event of such termination by CITY, the liability of CITY to KENDRICK shall be limited to the reasonable increased costs (documented as provided herein) of providing such services during such interruption of service prior to such termination.

XI. BASIS AND METHOD OF PAYMENT

- A. Reimbursement. KENDRICK shall pay CITY in accordance herewith the amounts set forth in Exhibit "A" for each service. KENDRICK shall also reimburse CITY for any fuel surcharges incurred on behalf of KENDRICK in accordance with the fuel adjustment agreement between CITY and Finley-Buttes Limited Partnership attached hereto as Exhibit "B". KENDRICK's pro rata share of any fuel surcharge shall be calculated by dividing KENDRICK's tonnage processed within the billing period by the total tonnage processed within the billing period. Should CITY receive a credit in accordance with fuel adjustment agreement, CITY shall calculate and provide KENDRICK with credit in the same manner. The rates specified shall include all costs, fees and other expenses of CITY associated with the performance of its obligations hereunder, including those costs, if any, associated with (a) tipping fees at the Designated Waste Processing Facility; (b) transport to the Ultimate Disposal Site; (c) disposal fees at the Ultimate Disposal Site; and (d) program area costs as shown at Exhibit "A".
- B. Modification of Rates.
1. Annual Rate Adjustment. The rates for services provided under this agreement shall be escalated annually by one point five percent (1.5%) effective upon October 1 of each year of the initial term as shown in Exhibit "A". Rates beyond the initial five (5) year term shall be determined through future sanitation rate studies and shall be adjusted prior to the commencement of any future term extension.
 2. CITY's Request.
 - a. CITY shall have the right to petition KENDRICK at any time for additional fee adjustments on the basis of unusual changes in the cost of operations i.e., revised federal and State of Idaho laws affecting this Agreement, which require mandatory compliance by the CITY resulting in increased operating costs to CITY, (as proven by full documentation of such increased operating costs as requested by KENDRICK). All such requests shall be fully developed setting forth the changes requested, existing costs, summary of estimated change in costs and the amount of fee change requested. KENDRICK shall respond to such requests within thirty (30) days. If the Parties are unable to reach agreement on a

proposed rate adjustment, either Party may invoke the provisions of paragraph B(4), below.

- b. KENDRICK understands that the cost of CITY's operations and services to be provided hereunder are subject to certain agreements (i.e., a Franchise Agreement and Hauling and Disposal Agreement). KENDRICK has had the opportunity to review and analyze such agreements. CITY shall have the right to petition for a fee adjustment from KENDRICK, and KENDRICK shall be obligated to grant such fee adjustment, when such adjustment is made by CITY in response to a fee adjustment required by CITY's contractors pursuant to such agreements. All such requests shall be fully developed setting forth the changes requested, existing costs, summary of estimated change in costs and the amount of fee change requested. KENDRICK shall respond to such requests within thirty (30) days. All fee adjustments made pursuant to this Section XI.B.2.b. shall be limited to KENDRICK's pro-rata share of the actual fee adjustment(s) required of CITY.
3. KENDRICK's Request. KENDRICK may petition CITY for a change in either the level or nature of the service provided, and the resulting proposed fee adjustment. The notice shall include a listing by KENDRICK of the type or nature of documentation, analysis or audit it is relying upon in support of the proposed change. Within sixty (60) days following receipt of such a request, unless some other time period is mutually agreed to by the Parties, CITY shall notify KENDRICK as to whether it agrees with the modification of level and/or nature of service and/or the fee adjustment. Nothing herein shall be construed to require CITY to consent to such change in the nature and/or level of service. In the event CITY does not agree with KENDRICK's fee adjustment, it shall also provide KENDRICK with copies of all documentation, analysis or audit, on which CITY relies with CITY's written response. If CITY agrees with the fee adjustment, such adjustment will become effective upon KENDRICK giving written notice to CITY to implement the change in the level and/or nature of service. In the event that KENDRICK does not implement such changes in the nature and/or level of service (after CITY has agreed to such changes), KENDRICK shall reimburse CITY for its costs, plus actual reasonable administrative charges not to exceed fifteen percent (15%) of such costs, incurred in responding to KENDRICK's request for such adjustment. It is further acknowledged that this paragraph shall not operate so as to terminate the material provisions and intent of this Agreement; that is, CITY shall provide the solid waste disposal services set forth herein to KENDRICK during the term of this Agreement while deciding on KENDRICK's petition for change.
4. Arbitration of Disputes. In the event that the Parties cannot agree upon compensation for the work to be performed, the Parties agree that such a dispute shall be subject to binding arbitration pursuant to the rules of the Uniform Arbitration Act. The Parties shall mutually select a disinterested, non-local arbitrator. In the event the Parties are unable to mutually agree, each Party shall designate a disinterested, non-local individual and these two (2) designees shall then select the arbitrator. All designations of arbitrator or designee shall occur within ten (10) days of notice of dispute being delivered by one (1) Party to the other, and designees shall select the arbitrator within

ten (10) days of their designation. The decision of the arbitrator shall be binding on both Parties. The non-prevailing Party, as determined by the arbitrator, shall pay all costs of the arbitration and the prevailing Party shall be awarded its reasonable costs and reasonable attorney fees incurred in participating in such arbitration, said costs and attorney fees shall be limited to the amount of ten thousand dollars (\$10,000.00).

5. Effective Date. The fee adjustments contemplated in subparagraphs (2) and (3) above, shall become effective on the date(s) that the changes in service commence, or on the date such contractual rates change.
 6. Emergency Services. Should additional services be required in an emergency, above and beyond those contemplated in this Agreement, KENDRICK may order reasonable delivery of services and KENDRICK shall pay the verifiable costs of such services, plus actual reasonable administrative charges not to exceed fifteen percent (15%) of such costs.
- C. Payment. CITY shall be responsible for billing KENDRICK monthly for the services set forth herein. KENDRICK shall remit payment to CITY by the 20th day of each month following receipt of CITY's billing. In the event that KENDRICK fails to remit payment to CITY by the 20th day of each month for such billing, KENDRICK shall pay to CITY, in addition to the amount of the billing, a late fee in the amount of one percent (1%) of the amount of the billing per day beyond the due date. In addition to this late fee, in the event that KENDRICK fails to remit payment to CITY within fourteen (14) days from the due date, CITY may, in its discretion, without penalty or determination that KENDRICK is in breach of this Agreement, suspend its obligations and services to be provided hereunder until such charges are paid.

XII. TITLE TO WASTE

Title to all Acceptable Waste accepted at CITY's Designated Waste Processing Facility or Recycling Center, shall pass to CITY when so accepted. Title to Hazardous Wastes, potentially harmful wastes, Infectious Wastes or other Unacceptable Waste shall not vest with CITY, but shall remain in the Producer. KENDRICK further agrees that it shall have the responsibility to identify the Producer of such wastes.

XIII. WAIVER

The failure of KENDRICK or CITY to insist on strict performance of any of the terms and conditions hereof shall not be deemed a waiver of the rights or remedies that KENDRICK or CITY may have regarding that specific instance, and shall not be deemed a waiver of any subsequent breach or default in any of the terms and conditions hereof. Making or receiving payments pursuant to this Agreement during the existence of a dispute shall not be deemed to and shall not constitute a waiver of any of the claims or defenses of the Party making such payment.

XIV. ADHERENCE TO LAWS

CITY and KENDRICK shall at all times comply with and adhere to applicable laws governing the performance of the services described herein. Non-compliance with applicable statutes, rules and regulations by CITY or KENDRICK shall act as a breach of this Agreement and shall subject the non-complying Party to liability therefore. CITY and KENDRICK shall report violations of such laws as soon as practicable.

XV. RECORDS AND INSPECTION

A. Records

CITY shall maintain such records as may be specified herein or may be necessary to document the quantity of solid waste accepted and processed in the performance of this Agreement separately from that solid waste received by CITY pursuant to any other agreement with any governmental entity, business or person and to document the time and date of performance of services hereunder. Actual scale records shall be utilized in determining the quantity of solid waste collected and transported hereunder unless the Parties hereafter agree to use a system of estimation. Such actual scale weights shall be obtained utilizing the scales maintained at the Designated Waste Processing Facility. CITY shall make all documents relating to the performance of work hereunder, including scale records, available to KENDRICK within fourteen (14) working days of receiving written notice detailing the documents requested. This time period may be extended where extenuating circumstances exist. Should KENDRICK desire that records be maintained other than as provided above, KENDRICK may petition CITY to cause such records to be maintained, and CITY, in its sole discretion, may cause such records to be maintained, provide that the cost of maintaining such records shall be borne by KENDRICK. Further the Parties agree that CITY shall provide KENDRICK, with each monthly billing, the following information as to the solid waste received and processed hereunder during the preceding month.

1. Tonnage of Acceptable Waste broken down into categories of:
 - a. Transport Waste;
 - b. Inert/Demolition/Compost Waste;
 - c. Recyclable materials received from KENDRICK's collection franchisee.
2. The number of White Goods accepted at the Designated Waste Processing Facility, including the names and addresses of the Producers of such White Goods. Provided that any additional cost to CITY incurred in providing such information shall be borne by KENDRICK.

B. Inspection

KENDRICK reserves the right to conduct on-site inspections of CITY's operations (including, without limitation, the actual weighing of solid waste) without notice and at

reasonable times and in a reasonable manner. The costs of such inspections, including any increase in CITY's cost of operations as a result of accommodating such inspections shall be borne by KENDRICK. CITY shall furnish KENDRICK with all requested information relating to such work, provided the costs of providing such information shall be borne by KENDRICK.

XVI. JURISDICTION AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho, and venue shall be in the District Court of Latah County.

XVII. BINDING ON SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors and permitted assigns.

XVIII. DELAYS IN CARRYING OUT WORK

CITY shall not be held responsible by reason of any delay in the performance of this Agreement when such delay is primarily caused by some act of God, provided that in the case of delay caused by an act of God, CITY shall give notice to KENDRICK (in writing, at the earliest possible time) of the causes of such delay. Such a delay shall not be considered to be an interruption of service as designated in Section X of this Agreement. Provided, that if such delay due to an act of God continues for a period of twenty (20) consecutive days, either Party may terminate this Agreement without liability to the other Party. Such termination shall be effective upon written notice provided to the other Party.

XIX. HOLD HARMLESS/INDEMNIFICATION

- A. The Parties are governmental entities subject to statutory and constitutional restrictions concerning the acceptance of liability. The Parties liabilities are further governed by the Idaho Tort Claims Act. It is the intention of the Parties that each will be responsible for its own acts and omissions and those of its officers and employees acting within the course and scope of their employment.
- B. Further, the Parties understand that the Idaho Tort Claims Act, Idaho Code § 6-903(2)(ii), states that each Party's liability is secondary to the obligation of an insurer or indemnitor, or other vehicle not owned or leased by the Party.

XX. TERM

This Agreement shall be in effect for five (5) years commencing on October 1, 2023, and ending September 30, 2028. The Parties may agree to one (1) additional five (5) year term extension ending

September 30, 2033 and one (1) additional two (2) year term extension ending September 30, 2035. If either Party intends not to extend the terms beyond fiscal year 2028 or 2033, the Party shall notify the other in writing of this intent one hundred eighty (180) days prior to the expiration of the existing term.

XXI. WASTE FLOW/FLOW CONTROL

KENDRICK shall enact and maintain in force and effect and use best efforts to enforce applicable ordinances to require all Acceptable Waste, excluding Recyclable Materials, produced within KENDRICK to be delivered to the Designated Waste Processing Facility.

XXII. RESOLUTION OF DISPUTES

Any dispute arising as to the terms of this Agreement, excepting the compensation to be paid to CITY, as referenced in Section XI, shall be dealt with in the following manner, unless otherwise specified:

- A. The Party seeking resolution of a dispute under this Agreement shall provide the other Party with written notice of the specific nature of the dispute and the section of this Agreement relied on for its position;
- B. The Party receiving the notice shall respond in writing within five (5) working days as to what action it will take to resolve the dispute;
- C. If a dispute continues to exist, the Parties shall meet within ten (10) working days from the date of the receipt of the written response in an attempt to resolve the dispute. KENDRICK shall be represented by its Mayor (and any other representatives it desires to have present), and CITY shall be represented by its Mayor (and any other representatives it desires to have present), in an attempt to resolve the dispute.
- D. Such resolution of the dispute as the Parties are able to agree upon shall be put in writing and signed by the representatives of each Party and shall become a part of this Agreement.
- E. If a dispute is not resolved through the foregoing procedures, either Party may seek satisfaction through a complaint filed in the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah, which shall be the exclusive forum agreed to by the Parties. (In any matter before the court, the remedy of specific performance shall be the preferred remedy.) In any action filed pursuant to this Agreement, costs and reasonable attorney fees shall be awarded by the court to the prevailing Party.
- F. Any time limits for action under this Agreement may be increased or decreased by mutual agreement of the Parties, said agreements to be in writing.

XXIII. SEVERABILITY

If any provision of this Agreement shall be declared illegal, void or unenforceable, the remaining provisions herein shall not be affected and shall remain in full force and effect.

XXIV. ENTIRE AGREEMENT

This Agreement and its Exhibit(s) constitute(s) the entire agreement and understanding between the Parties and it shall not be considered modified, altered, changed or amended in any respect unless done in accordance with this Agreement, reduced to writing, and signed by the Parties hereto. Any finding by a court of competent jurisdiction that any part or provision of this Agreement is unconstitutional or invalid shall not invalidate any other provision hereof.

XXV. PRIOR AGREEMENTS

This Agreement supersedes any and all prior Agreements between the parties for solid waste disposal services.

CITY, by and through its Mayor, and KENDRICK, by and through its Mayor, have duly executed this Agreement in duplicate originals, to be effective on the 1st day of October, 2023, notwithstanding the date executed by the Parties hereto.

CITY OF KENDRICK, IDAHO:

CITY OF MOSCOW, IDAHO

Rose Norris, Mayor

Arthur D. Bettge, Mayor

ATTEST:

ATTEST:

Nadine Towne, Kendrick City Clerk

Laurie M. Hopkins, Moscow City Clerk

EXHIBIT “A”

**SCHEDULE OF REIMBURSEMENT
October 1, 2023 through September 30, 2028**

The City of Kendrick (KENDRICK) agrees to pay the City of Moscow (CITY) the amounts shown herein for Solid Waste Disposal, pursuant to this Agreement, and such being delivered to the Solid Waste Processing Facility by KENDRICK’s collection franchisee or other person, or entity authorized by KENDRICK.

1. Municipal Solid Waste Disposal (per ton):

FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
\$99.27	\$100.76	\$102.27	\$103.80	\$105.36

2. Non-Municipal Solid Waste Disposal (per ton):

FY 2024	FY 2025	FY 2026	FY 2027	FY2028
\$40.50	\$41.11	\$41.73	\$42.36	\$43.00

3. Mixed Municipal/Non-Municipal Solid Waste Disposal (per ton):

FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
\$70.04	\$71.10	\$72.17	\$73.26	\$74.36

4. Compostable Materials: No Charge

5. Recyclable Materials: No Charge

6. Tire Disposal (per ton): \$225.00 **Tires with Rims (each):** Additional \$2.20

7. Program Cost Rates: \$1.30 per month per billed COUNTY Collection Unit

This rate shall pay for unlimited access by individual KENDRICK residents to the CITY Recycling Facility, Household Hazardous Waste Facility, Solid Waste Education, and individual access to the Solid Waste Processing Facility; provided, however, that individual access to the Solid Waste Processing Facility shall be assessed a ten dollar (\$10) per load “minimum fee” and shall be billed directly to the resident.

Fiscal year 2024 fee modification shall be effective October 1, 2023. The fee modification date shall be October 1 of each year (example: Fiscal year 2024 fee modification shall be effective October 1, 2023).

EXHIBIT "B"

FIRST AMENDMENT TO AGREEMENT FOR SOLID WASTE TRANSPORTATION AND DISPOSAL BETWEEN CITY OF MOSCOW, IDAHO AND FINLEY-BUTTES LIMITED PARTNERSHIP

THIS FIRST AMENDMENT TO AGREEMENT FOR SOLID WASTE TRANSPORTATION AND DISPOSAL BETWEEN CITY OF MOSCOW, IDAHO AND FINLEY-BUTTES LIMITED PARTNERSHIP (hereinafter "First Amendment"), is made and entered into this 19th day of December, 2022, by and between City of Moscow, Idaho, a municipal corporation of the State of Idaho, 206 East Third Street, Moscow, Idaho, 83843 (hereinafter "CITY"), and Finley-Buttes Limited Partnership, an Oregon limited partnership, (hereinafter "CONTRACTOR").

WITNESSETH:

WHEREAS, CONTRACTOR was selected to own, otherwise provide, and operate Facilities to accept CITY Acceptable Waste in loaded Trailers at CITY's designated Solid Waste Processing Facility (hereinafter "SWPF") and to Transport to and Dispose of that Acceptable Waste at the Disposal Site for CITY through an executed Agreement approved by City Council on October 7, 2019, approved by CONTRACTOR's Board of Directors as evidenced by the Unanimous Written Consent of the General Partner of Finley-Buttes Limited Partnership dated October 16, 2019 and said Agreement was executed by the Parties on November 4, 2019, see Attachment "A" (hereinafter "Agreement"); and

WHEREAS, the Agreement provides for modification upon written agreement signed by the Parties (Article 2, Section 2.13); and

WHEREAS, the Agreement permits CITY, at CITY's sole discretion, to consider CONTRACTOR requests for reimbursements due to extraordinary fuel price increases (Article 8, Section 8.2 A.(4)); and

WHEREAS, the Agreement allows for adjustment of a Service Fee or any other payment or fee at any time by mutual consent of the Parties (Article 8, Section 8.4. E); and

WHEREAS, CONTRACTOR requested fuel relief due to the unanticipated significant increases in diesel fuel costs and the fact that a portion of CONTRACTOR's cost is predicated on fuel usage to transport CITY waste two hundred fourteen (214) miles one way; and

WHEREAS, CITY has determined that the requested fuel relief is reasonable and appropriate and has previously granted fuel relief to CONTRACTOR's predecessor when similar fuel cost volatility occurred; and

WHEREAS, the proposed fuel relief adjustment contained herein provides a fair and predictable method of accounting for fuel cost volatility and provides for both reimbursement of excessive fuel expenses to CONTRACTOR when fuel prices exceed 15% of the adjusted base fuel index, and credits to CITY when fuel prices drop 15% below the adjusted base fuel index as described herein; and

FIRST AMENDMENT TO SOLID WASTE TRANSPORTATION AND DISPOSAL AGREEMENT
FINLEY-BUTTES LIMITED PARTNERSHIP

2022-203 PAGE 1 OF 4

WHEREAS, the Parties intend to modify the Agreement through this First Amendment to accommodate CONTRACTOR'S requested fuel adjustment;

NOW, THEREFORE, it is agreed, for and in consideration of the mutual covenants and promises between the Parties hereto, as follows:

Section 1. All matters stated above are found to be true and correct and are incorporated herein by reference as if copied in their entirety and shall be adopted with the following sections of this First Amendment.

Section 2. It has been determined that a fair and predictable method of accounting for fuel cost volatility is warranted and is in the best interests of both Parties.

Section 3. CITY shall apply fuel cost adjustments as a payment to CONTRACTOR, or CONTRACTOR will apply the fuel cost adjustment as a credit to CITY, when the index changes as defined below.

1. The index to be used when considering fuel price adjustments pursuant to this First Amendment shall be the U.S. Energy Information Administration (EIA) https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=pet&s=emd_epd2d_pte_r5xca_dpg&f=m, Monthly West Coast (PADD 5) Except California No 2 Diesel Retail Prices (Dollars per Gallon).
2. The Current Fuel Index (CFI) shall be the current month's average price per gallon as reported by EIA as referenced herein. The monthly average CFI, shall be used to compute fuel adjustments for the same month that services are performed for CITY. (i.e. October CFI used to compute fuel adjustment for October services). Fuel adjustments will be calculated by the 15th of the month for the prior month's services, and any payments or credits will be applied to the subsequent month's bill (i.e. September's adjustment will be calculated on October 15th and any payments or credits will be applied to October's billing).
3. Fuel adjustments provided by this First Amendment shall be retroactively effective to January 1, 2022, and shall continue thereafter through the duration of the term of the Agreement.
4. Effective January 1, 2022, the initial base fuel index (BFI) shall be Three Dollars and Thirty-One Cents (\$3.31) per gallon. The BFI shall thereafter be adjusted annually on October 1st of each year beginning October 1, 2022 to establish the Adjusted Base Fuel Index (ABFI) by an amount equal to forty percent (40%) of the annual Consumer Price Index (CPI) as published in January of each year by the United States, Bureau of Labor Statistics (Index I.D. CUUR0000SA0, All Urban Consumers, U.S. All items, 1982-84 = 100) as described herein.

$$ABFI = BFI * (CPI \text{ annual adjustment} * 40\%)$$

Where:

BFI = Base Fuel Index

CPI Annual Adjustment = ((current year annual average CPI - prior year annual average CPI) / prior year annual average CPI)
ABFI = adjusted base fuel index

5. A fuel price adjustment will only be made when the CFI varies by more than fifteen percent (15%) from the ABFI. Payments and credits shall be computed as follows:

Contractor payment if CFI is greater than 115% of ABFI:
 $FPA = (CFI - (ABFI * 115\%)) * Q * T$

City credit if CFI is less than 85% of ABFI:
 $FPA = (CFI - (ABFI * 85\%)) * Q * T$

Where:
FPA = fuel price adjustment
Q = 92.44 gallons per trip
T = monthly trips

Section 4. All other terms and conditions of the Agreement that are not amended by this First Amendment shall remain in full force and effect.

Section 5. This First Amendment was adopted by the City Council of the City of Moscow, Idaho and Approved by the Mayor of the City of Moscow on a regularly scheduled meeting dated November 5, 2022.

IN WITNESS WHEREOF, said CONTRACTOR and CITY have caused this First Amendment to be executed on the day and year first above written.

CONTRACTOR

By: Brian Evola
Brian Evola
Finley-Buttes Limited Partnership



CITY

City of Moscow, Idaho

By: Arthur D. Bettge
Arthur D. Bettge, Mayor

ATTEST

Taylor Riedner
Taylor Riedner, Deputy City Clerk

Approved As To Form:
Mia Bautista
Mia Bautista, City Attorney

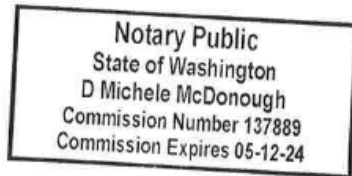
FIRST AMENDMENT TO SOLID WASTE TRANSPORTATION AND DISPOSAL AGREEMENT
FINLEY-BUTTES LIMITED PARTNERSHIP

PAGE 3 OF 4

ACKNOWLEDGMENT

STATE OF Washington) ss:
County of Clark)

On this 12th day of December, 2022, before me, a Notary Public in and for said State, appeared Brian Evola, known to me to be the person named above and acknowledged that he executed the foregoing document as the duly authorized representative for Finley-Buttes Limited Partnership.



D. Michele McDonough
Notary Public for State of Washington
Residing at Clark County
My commission expires: 05-12-24

**SOLID WASTE DISPOSAL AGREEMENT
BETWEEN CITY OF DEARY, IDAHO AND
CITY OF MOSCOW, IDAHO**

THIS SOLID WASTE DISPOSAL AGREEMENT BETWEEN CITY OF DEARY, IDAHO AND CITY OF MOSCOW, IDAHO (hereinafter "Agreement"), made and entered into this ____ day of _____, 2023, by and between City of Deary, Idaho, a municipal corporation of the State of Idaho, 401 Line St., Deary, Idaho, 83823 (hereinafter "DEARY"), and the City of Moscow, Idaho, a municipal corporation of the State of Idaho, 206 East Third Street, Moscow, Idaho, 83843 (hereinafter "CITY").

W I T N E S S E T H:

WHEREAS, CITY manages and operates a solid waste and recycling processing and disposal system in Latah County; and

WHEREAS, CITY has offered to provide DEARY with solid waste and recycling services and related programs in accordance with Federal, State of Idaho, and local statutes, laws, rules, regulations, and ordinances as defined herein; and

WHEREAS, DEARY finds that CITY is qualified and capable to provide such services to DEARY; and

WHEREAS, CITY and DEARY have an existing solid waste disposal agreement that was executed on April 3, 2017, and which expires on September 30, 2023; and

WHEREAS, DEARY wishes for CITY to continue to provide DEARY with solid waste processing and disposal and recycling processing services; and

WHEREAS, in 2021, CITY conducted a Sanitation Rate Study to determine the cost of solid waste processing and disposal services and necessary annual adjustments; and

WHEREAS, in 2022, CITY amended its agreement with Finley-Buttes Limited Partnership (CITY's municipal solid waste (MSW) transport and disposal contractor) to provide fuel cost relief through a fuel adjustment formula as set forth in Exhibit "B" attached hereto and incorporated herein;

THEREFORE, CITY and DEARY hereby enter into an Agreement for disposal and/or recycling of Acceptable Waste, Demolition/Inert Waste, Compostable Waste and recyclable materials received from residences, businesses, institutions and industries within DEARY and for programs related thereto, and for and in consideration of the promises and covenants contained herein, CITY hereby agrees to and with DEARY to undertake and execute, for an agreed upon consideration, the herein described work, in a good, substantial and workmanlike manner.

I. DEFINITIONS

For purposes of interpretation of the terms of this Agreement, the following terms, phrases and derivations shall have the following meanings. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The term "shall" is always mandatory and not merely directory.

- A. **ACCEPTABLE WASTE:** That portion of solid waste that is normally disposed of and originating from residential dwellings, businesses, industrial and commercial establishments which consists of household wastes from private residences, commercial waste which originates in wholesale, retail or service establishments such as restaurants, stores, markets, theaters, hotels and warehouses, and institutional waste material originating in schools, hospitals, research institutions and public buildings. Such Acceptable Waste shall include tires, metals and white goods. In no event shall Acceptable Waste include any Hazardous Waste, Infectious Waste or any Unacceptable Waste.
- B. **COLLECTION FRANCHISEE:** The person, persons, corporation or partnership holding a contract and/or franchise issued or granted by DEARY authorizing such person, persons, corporation or partnership to operate, conduct or maintain a solid waste collection and disposal system upon or over any highways, streets, roads, alleys and public ways of DEARY.
- C. **COLLECTION UNIT:** A DEARY resident and/or business receiving solid waste collection services at a place of residence or place of business located within DEARY.
 - 1. **Individual Unit:** A dwelling within DEARY occupied by a person or group of persons. An individual unit shall be deemed occupied when either occupied or generating solid waste. Each unit within an apartment building, condominium, duplex or mobile home park shall be treated as an individual residential unit, unless served by a mechanical container or compactor.
 - 2. **Commercial Unit:** Each space within DEARY occupied by an individual business. A business shall be deemed occupied when either occupied or generating solid waste.
- D. **COMPOSTABLE WASTE:** That Acceptable Waste that has been accepted at the Designated Waste Processing Facility for composting. Such Compostable Waste shall conform to all statutes, rules and regulations of any governmental regulatory agency which pertains to composting.
- E. **DEMOLITION/INERT WASTE:** That Acceptable Waste that has been accepted at the Designated Waste Processing Facility for placement in the demolition/inert landfill. Such Demolition/Inert Waste shall conform to all statutes, rules and regulations of any governmental regulatory agency which pertains to demolition/inert landfiling.

- F. DESIGNATED WASTE PROCESSING FACILITY: The facility or site designated by CITY where Acceptable Waste is compacted, incinerated, landfilled, composted, transferred or otherwise disposed of or treated prior to disposal.
- G. DIRECTOR OF SOLID WASTE SERVICES: The Moscow CITY Supervisor or such other person or persons so designated by the Moscow CITY Supervisor.
- H. HAZARDOUS WASTE: Any chemical, compound, mixture, substance or article which is designated by federal law or regulation, Idaho law or regulation or regulation of any other state when applicable (such as in the case of solid waste exported to or through another state for ultimate disposal) to be 'hazardous', 'dangerous', or 'extremely dangerous'. Hazardous Waste includes any material by reason of its composition or characteristics, is:
1. Toxic or hazardous waste as defined in either the Solid Waste Disposal Act, 42 U.S.C. Section 6901 *et seq*, as replaced, amended, expanded or supplemented, or any laws of similar purpose or effect, and such policies or regulations thereunder, or under relevant state law as replaced, amended, expanded or supplemented, or any laws of similar purpose or effect, and any rules, regulations or policies thereunder, or
 2. Special nuclear or by-products material within the meaning of the Atomic Energy Act of 1954, 42 U.S.C. Section 2011 *et seq*, as replaced, amended, expanded or supplemented, or any laws of similar purpose or effect, and such policies or regulations thereunder, or under relevant state law as replaced, amended, expanded or supplemented, or any laws of similar purpose or effect, and any rules, regulations or policies thereunder; or
 3. Other material which any governmental agency or unit having appropriate jurisdiction shall determine from time to time is harmful, toxic or dangerous or otherwise ineligible for transfer through, transportation by, or disposal from the site; or
 4. Any material which would result in residue being designated as hazardous waste under the above; or
 5. Any waste falling within the definition contained in Idaho Code § 39-4403 (8).
- I. HOUSEHOLD SOLID WASTE: That Acceptable Waste, including garbage or trash produced by ordinary residential units, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas, which fits into a bag, manual container or bundle less than four feet (4') in length. Does not include bulky, Infectious Waste, Hazardous Waste, Unacceptable Waste or any type of solid waste that is not normally collected by DEARY's collection Franchisee at individual or commercial units.
- J. INFECTIOUS WASTE: Any material, chemical, compound, mixture, substance or article known to be infectious by the generator or producer or which is designated by the United States Environmental Protection Agency or other appropriate agency of the Federal

Government or the State of Idaho to be "infectious" as that term is commonly defined by or pursuant to law.

- K. **PRODUCER:** Any person, business or other entity which produces solid waste within DEARY.
- L. **PUTRESCIBLE WASTE:** Solid waste which has the capacity to become rotten or foul.
- M. **RATE MODIFICATION DATE:** The date whereby all rate adjustments shall become effective. The rate modification date shall be October 1 of each year this Agreement is in force.
- N. **RESOURCE RECOVERY:** The process, including recycling, of obtaining useful material or energy resources from solid waste.
- O. **TRANSFER STATION:** The transfer, processing and transportation facility which has been designated by CITY for the purpose of transferring, processing and/or transporting Transport Waste.
- P. **TRANSPORT WASTE:** That Acceptable Waste which has been accepted at the Designated Waste Processing Facility for loading into transport vehicles for transport to an Ultimate Disposal Site. Such Transport Waste shall conform to the rules of, and be acceptable to, the Ultimate Disposal Site.
- Q. **ULTIMATE DISPOSAL SITE:** Any disposal site chosen by CITY which may ultimately receive Transport Waste from the Designated Waste Processing Facility.
- R. **UNACCEPTABLE WASTE:** That portion of the solid waste such as, but not limited to, explosives, pathological and biological waste, Infectious Waste, Hazardous Waste (except as deemed subject to the Household Hazardous Waste Program as defined in this Agreement), radioactive materials, foundry sand, cesspool waste, human remains, industrial process wastes, motor vehicles (including major motor vehicle parts such as transmissions, rear ends, springs and fenders), agricultural and farm machinery and equipment, marine vessels and major parts thereof or any other large type of machinery or equipment, or that which in the reasonable judgment of the Director may present a substantial endangerment to health or safety, or has a reasonable possibility of adversely affecting the operation of the Designated Waste Processing Facility or the acceptance of Transport Waste by the Ultimate Disposal Site.
- S. **WHITE GOODS.** Appliances such as refrigerators, ranges, water heaters, freezers, unit air conditioners, washing machines, dishwashers, clothes dryers, and other similar domestic and commercial large appliances.

II. SCOPE OF WORK

- A. SERVICE: CITY shall furnish, manage and maintain a system of processing, transportation, and disposal and/or recycling of Acceptable Waste as described herein. CITY shall further provide access to CITY's Designated Waste Processing Facility, Recycling Center, Household Hazardous Waste Program and Solid Waste Education Program to the residents of DEARY as provided herein. These services shall include all supervision, materials, equipment, labor and all other items necessary to satisfy the terms of this Agreement.
- B. ACCEPTANCE OF ACCEPTABLE WASTE: CITY shall accept all Acceptable Waste delivered to its Designated Waste Processing Facility by DEARY's Collection Franchisee and/or by individual residents of DEARY, provided all tipping fees associated with such acceptance are paid. CITY shall provide for the processing of said Acceptable Waste, including landfilling, composting, recycling and/or hauling of said Acceptable Waste (Transport Waste) to the Ultimate Disposal Site.
- C. ACCEPTANCE OF RECYCLABLE MATERIALS: CITY shall accept, process and provide for ultimate disposal of certain recyclable materials delivered to the CITY's Recycling Center by DEARY's Collection Franchisee or the individual residents of DEARY, provided all tipping fees associated with such acceptance are paid. The types of materials to be accepted at CITY Recycling Center, the amount of money to be paid, if any, for recyclable materials and the types of recyclable materials upon which such money will be paid shall be the sole decision of CITY. Provided, that DEARY's Collection Franchisee, other persons authorized by DEARY to operate a recycling collection business, or any other person operating a recycling collection business shall not be paid for recyclable materials collected and/or delivered to CITY's Recycling Center. Provided further, that DEARY and/or residents of DEARY may arrange for the processing of such recyclable materials through any other public or private entity.
- D. HOUSEHOLD HAZARDOUS WASTE PROGRAM: CITY shall provide access to CITY's Household Hazardous Waste Collection Facility to all residents of DEARY. The types of materials to be accepted pursuant to such Household Hazardous Waste Collection program and the operation of such program shall be the sole decision of CITY, upon consultation with DEARY.
- E. SOLID WASTE EDUCATION PROGRAM: CITY shall include DEARY in any and all solid waste education programs established by CITY.
- F. INFECTIOUS WASTE AND POTENTIALLY HARMFUL WASTES:
 - 1. CITY may provide, but is not obligated to provide, disposal programs for Infectious Waste or potentially harmful wastes. In the event that CITY elects to provide such program(s), CITY shall handle such Infectious Waste and potentially harmful wastes in a manner consistent with all applicable regulations.
 - 2. Producers of such wastes shall arrange with CITY, at Producers own expense, for the disposal of such wastes and the charges therefor, and the costs of disposing of such wastes shall be set by CITY.

- G. **UNACCEPTABLE WASTE:** DEARY shall not permit its Collection Franchisee or any other person to place Unacceptable Waste into a collection vehicle or container. DEARY shall implement a program of training and procedure which is designed to prevent the placing of Unacceptable Waste into collection vehicles or containers. In the event that DEARY's Collection Franchisee or any other person delivers unacceptable waste to the Designated Waste Processing Facility, CITY shall, at CITY's sole option, either:
1. Dispose of such Unacceptable Waste in a legally proper manner, and shall charge DEARY for all costs thereof, plus actual reasonable administrative charges not to exceed fifteen percent (15%) of such costs; or
 2. Reject such Unacceptable Waste.

III. DESIGNATION OF ULTIMATE DISPOSAL SITE(S)

The Parties understand and agree that CITY shall have the sole and exclusive right to designate the location or locations to which solid waste will be transported for processing and ultimate disposal. Provided that CITY shall consult with DEARY and seek input regarding the designation of said ultimate disposal site and shall in good faith consider such input.

IV. HOLIDAYS

The following shall be holidays for purpose of this Agreement:

New Year's Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Day

CITY may decide to observe any or all of the above listed holidays by suspension of disposal or recycling services on a holiday, but such decision in no manner relieves CITY of its obligation to provide such services on the next regularly scheduled service day.

V. COMPLAINTS

All complaints regarding CITY's performance of this Agreement shall be made through DEARY to the Director of Solid Waste Services and shall be given prompt and courteous attention. Complaints made directly to CITY from producers in DEARY shall be given prompt and courteous attention. CITY shall investigate and respond to such complaints and shall inform DEARY in a timely manner of the nature of such complaints and any remedial action taken in response to such complaints.

VI. NOTIFICATION

DEARY shall notify all producers to be served hereunder about complaint procedures, rates, fees, regulations, schedules, and changes in the operation of the disposal and or/recycling system by means of press releases and/or publication of pamphlets and/or other means as elected by DEARY, and through at least one (1) annual mailing per year. The cost of such notification shall be the responsibility of DEARY.

VII. POINT OF CONTACT

All notices between CITY and DEARY shall be directed by CITY to the Mayor of DEARY, P O Box 236, Deary, Idaho, 83823, and by DEARY to CITY via the Director of Solid Waste Services, at P O Box 9203, Moscow, Idaho, 83843.

VIII. SALVAGE RIGHTS

CITY shall have the full and exclusive right to all salvageable materials when such materials are accepted at the Designated Waste Processing Facility or Recycling Center pursuant to this Agreement, and CITY shall have the sole right to any and all funds received from the sale of said salvageable materials. Salvaging or scavenging by DEARY, its Collection Franchisee(s), or any of its employees or agents after delivery to said Solid Waste Processing Facility or Recycling Center is prohibited.

IX. INSURANCE

- A. CITY shall at all times during the term of this Agreement, maintain, or cause its franchisees to maintain in full force and effect Employer's Liability, Workmen's Compensation, Public Liability and Property Damage insurance, including contractual liability coverage. Additionally, at all times during the term of this Agreement, DEARY shall obtain and maintain, or cause its Collection Franchisee to obtain and maintain in full force and effect, public liability insurance and property damage insurance, including contractual liability coverage in the amounts of one million dollars (\$1,000,000.00) per occurrence, and two million dollars (\$2,000,000.00) aggregate. All insurance shall be provided before commencement of work hereunder. CITY and DEARY shall annually furnish the other with certificates of insurance or other evidence satisfactory to the other that such insurance has been procured and is in force. Said certificates shall contain the following express provisions:

"This is to certify that the policies of insurance described herein have been issued to the insured for whom this certificate is executed and are in force at this time. In the event of cancellation or material change in a policy affecting the certificate holder, thirty (30) days prior written notice of said cancellation or change shall be provided to the certificate holder."

- B. For purposes of this Agreement, CITY shall carry, and/or shall cause its franchisee(s) or agents to carry, the following types of insurance in at least the limits specified below:

<u>COVERAGE</u>	<u>LIMITS OF LIABILITY</u>
Workmen's Compensation	Statutory
Employer's Liability	\$1,000,000
General Liability	\$1,000,000
except automobile (bodily injury and/or property damage)	each occurrence/ \$2,000,000 aggregate
Automobile bodily injury and/or property damage liability, combined single limit	\$1,000,000 each occurrence

All coverage subject to policy conditions

- C. As an alternative to the above, CITY may, with express written permission of DEARY, provide the above public liability and property coverage under a plan of self-insurance. Each insurance policy with respect to public liability insurance may provide for self-insured retention of an amount of two hundred and fifty thousand dollars (\$250,000.00) with the result that CITY is its own insurer to that extent and with the requirement that CITY provides DEARY with such evidence of financial responsibility as deemed necessary by DEARY.

X. INTERRUPTION OF SERVICE

- A. Interruption of service shall mean that period of time during which services to be provided by CITY pursuant to this Agreement are interrupted, discontinued or substantially reduced, except as excused hereunder, for a period of five (5) consecutive days exclusive of Sundays and Holidays as defined herein; or after the expiration of five (5) days after notice, in accordance with the procedures required herein, is provided to CITY by DEARY that DEARY is terminating this Agreement because of a breach or default on the part of CITY and until such time as other arrangements can be made by DEARY for other such services.
- B. DEARY shall have the right to contract with another person, entity or corporation to provide the services set forth herein in the event of an interruption of service by CITY, for the duration of such interruption of service. In the event of interruption of service, all payments to CITY shall be suspended. During the period of such interruption of service, CITY shall be liable to DEARY for the reasonable costs of providing such services less the amount of payment DEARY would have been liable to make to CITY for providing such services. DEARY shall document the actual reasonable costs of providing such services during such interruption of service. CITY shall not be liable for costs which are not supported by such documentation.

- C. In the event that such interruption of service continues for a period of thirty (30) consecutive days, after the expiration of the 30th day, either DEARY or CITY may terminate this Agreement. Termination shall be effective not less than one hundred fifty (150) days after service of the notice of termination upon the non-terminating Party. In the event of such termination by CITY, the liability of CITY to DEARY shall be limited to the reasonable increased costs (documented as provided herein) of providing such services during such interruption of service prior to such termination.

XI. BASIS AND METHOD OF PAYMENT

- A. Reimbursement. DEARY shall pay CITY in accordance herewith the amounts set forth in Exhibit "A" for each service. DEARY shall also reimburse CITY for any fuel surcharges incurred on behalf of DEARY in accordance with the fuel adjustment agreement between CITY and Finley-Buttes Limited Partnership attached hereto as Exhibit "B". DEARY's pro rata share of any fuel surcharge shall be calculated by dividing DEARY's tonnage processed within the billing period by the total tonnage processed within the billing period. Should CITY receive a credit in accordance with fuel adjustment agreement, CITY shall calculate and provide DEARY with credit in the same manner. The rates specified shall include all costs, fees and other expenses of CITY associated with the performance of its obligations hereunder, including those costs, if any, associated with (a) tipping fees at the Designated Waste Processing Facility; (b) transport to the Ultimate Disposal Site; (c) disposal fees at the Ultimate Disposal Site; and (d) program area costs as shown at Exhibit "A".
- B. Modification of Rates.
1. Annual Rate Adjustment. The rates for services provided under this agreement shall be escalated annually by one point five percent (1.5%) effective upon October 1 of each year of the initial term as shown in Exhibit "A". Rates beyond the initial five (5) year term shall be determined through future sanitation rate studies and shall be adjusted prior to the commencement of any future term extension.
 2. CITY's Request.
 - a. CITY shall have the right to petition DEARY at any time for additional fee adjustments on the basis of unusual changes in the cost of operations i.e., revised federal and State of Idaho laws affecting this Agreement, which require mandatory compliance by the CITY resulting in increased operating costs to CITY, (as proven by full documentation of such increased operating costs as requested by DEARY). All such requests shall be fully developed setting forth the changes requested, existing costs, summary of estimated change in costs and the amount of fee change requested. DEARY shall respond to such requests within thirty (30) days. If the Parties are unable to reach agreement on a proposed rate adjustment, either Party may invoke the provisions of paragraph B(4), below.

- b. DEARY understands that the cost of CITY's operations and services to be provided hereunder are subject to certain agreements (i.e., a Franchise Agreement and Hauling and Disposal Agreement). DEARY has had the opportunity to review and analyze such agreements. CITY shall have the right to petition for a fee adjustment from DEARY, and DEARY shall be obligated to grant such fee adjustment, when such adjustment is made by CITY in response to a fee adjustment required by CITY's contractors pursuant to such agreements. All such requests shall be fully developed setting forth the changes requested, existing costs, summary of estimated change in costs and the amount of fee change requested. DEARY shall respond to such requests within thirty (30) days. All fee adjustments made pursuant to this Section XI.B.2.b. shall be limited to DEARY's pro-rata share of the actual fee adjustment(s) required of CITY.
3. DEARY's Request. DEARY may petition CITY for a change in either the level or nature of the service provided, and the resulting proposed fee adjustment. The notice shall include a listing by DEARY of the type or nature of documentation, analysis or audit it is relying upon in support of the proposed change. Within sixty (60) days following receipt of such a request, unless some other time period is mutually agreed to by the Parties, CITY shall notify DEARY as to whether it agrees with the modification of level and/or nature of service and/or the fee adjustment. Nothing herein shall be construed to require CITY to consent to such change in the nature and/or level of service. In the event CITY does not agree with DEARY's fee adjustment, it shall also provide DEARY with copies of all documentation, analysis or audit, on which CITY relies with CITY's written response. If CITY agrees with the fee adjustment, such adjustment will become effective upon DEARY giving written notice to CITY to implement the change in the level and/or nature of service. In the event that DEARY does not implement such changes in the nature and/or level of service (after CITY has agreed to such changes), DEARY shall reimburse CITY for its costs, plus actual reasonable administrative charges not to exceed fifteen percent (15%) of such costs, incurred in responding to DEARY's request for such adjustment. It is further acknowledged that this paragraph shall not operate so as to terminate the material provisions and intent of this Agreement; that is, CITY shall provide the solid waste disposal services set forth herein to DEARY during the term of this Agreement while deciding on DEARY's petition for change.
4. Arbitration of Disputes. In the event that the Parties cannot agree upon compensation for the work to be performed, the Parties agree that such a dispute shall be subject to binding arbitration pursuant to the rules of the Uniform Arbitration Act. The Parties shall mutually select a disinterested, non-local arbitrator. In the event the Parties are unable to mutually agree, each Party shall designate a disinterested, non-local individual and these two (2) designees shall then select the arbitrator. All designations of arbitrator or designee shall occur within ten (10) days of notice of dispute being delivered by one (1) Party to the other, and designees shall select the arbitrator within ten (10) days of their designation. The decision of the arbitrator shall be binding on both Parties. The non-prevailing Party, as determined by the arbitrator, shall pay all costs of the arbitration and the prevailing Party shall be awarded its reasonable costs

and reasonable attorney fees incurred in participating in such arbitration, said costs and attorney fees shall be limited to the amount of ten thousand dollars (\$10,000.00).

5. Effective Date. The fee adjustments contemplated in subparagraphs (2) and (3) above, shall become effective on the date(s) that the changes in service commence, or on the date such contractual rates change.
 6. Emergency Services. Should additional services be required in an emergency, above and beyond those contemplated in this Agreement, DEARY may order reasonable delivery of services and DEARY shall pay the verifiable costs of such services, plus actual reasonable administrative charges not to exceed fifteen percent (15%) of such costs.
- C. Payment. CITY shall be responsible for billing DEARY monthly for the services set forth herein. DEARY shall remit payment to CITY by the 20th day of each month following receipt of CITY's billing. In the event that DEARY fails to remit payment to CITY by the 20th day of each month for such billing, DEARY shall pay to CITY, in addition to the amount of the billing, a late fee in the amount of one percent (1%) of the amount of the billing per day beyond the due date. In addition to this late fee, in the event that DEARY fails to remit payment to CITY within fourteen (14) days from the due date, CITY may, in its discretion, without penalty or determination that DEARY is in breach of this Agreement, suspend its obligations and services to be provided hereunder until such charges are paid.

XII. TITLE TO WASTE

Title to all Acceptable Waste accepted at CITY's Designated Waste Processing Facility or Recycling Center, shall pass to CITY when so accepted. Title to Hazardous Wastes, potentially harmful wastes, Infectious Wastes or other Unacceptable Waste shall not vest with CITY, but shall remain in the Producer. DEARY further agrees that it shall have the responsibility to identify the Producer of such wastes.

XIII. WAIVER

The failure of DEARY or CITY to insist on strict performance of any of the terms and conditions hereof shall not be deemed a waiver of the rights or remedies that DEARY or CITY may have regarding that specific instance, and shall not be deemed a waiver of any subsequent breach or default in any of the terms and conditions hereof. Making or receiving payments pursuant to this Agreement during the existence of a dispute shall not be deemed to and shall not constitute a waiver of any of the claims or defenses of the Party making such payment.

XIV. ADHERENCE TO LAWS

CITY and DEARY shall at all times comply with and adhere to applicable laws governing the performance of the services described herein. Non-compliance with applicable statutes, rules and regulations by CITY or DEARY shall act as a breach of this Agreement and shall subject the non-complying Party to liability therefore. CITY and DEARY shall report violations of such laws as soon as practicable.

XV. RECORDS AND INSPECTION

A. Records

CITY shall maintain such records as may be specified herein or may be necessary to document the quantity of solid waste accepted and processed in the performance of this Agreement separately from that solid waste received by CITY pursuant to any other agreement with any governmental entity, business or person and to document the time and date of performance of services hereunder. Actual scale records shall be utilized in determining the quantity of solid waste collected and transported hereunder unless the Parties hereafter agree to use a system of estimation. Such actual scale weights shall be obtained utilizing the scales maintained at the Designated Waste Processing Facility. CITY shall make all documents relating to the performance of work hereunder, including scale records, available to DEARY within fourteen (14) working days of receiving written notice detailing the documents requested. This time period may be extended where extenuating circumstances exist. Should DEARY desire that records be maintained other than as provided above, DEARY may petition CITY to cause such records to be maintained, and CITY, in its sole discretion, may cause such records to be maintained, provide that the cost of maintaining such records shall be borne by DEARY. Further the Parties agree that CITY shall provide DEARY, with each monthly billing, the following information as to the solid waste received and processed hereunder during the preceding month.

1. Tonnage of Acceptable Waste broken down into categories of:
 - a. Transport Waste;
 - b. Inert/Demolition/Compost Waste;
 - c. Recyclable materials received from DEARY's collection franchisee.
2. The number of White Goods accepted at the Designated Waste Processing Facility, including the names and addresses of the Producers of such White Goods. Provided that any additional cost to CITY incurred in providing such information shall be borne by DEARY.

B. Inspection

DEARY reserves the right to conduct on-site inspections of CITY's operations (including, without limitation, the actual weighing of solid waste) without notice and at reasonable times and in a reasonable manner. The costs of such inspections, including any increase in CITY's cost of operations as a result of accommodating such inspections shall be borne by DEARY.

CITY shall furnish DEARY with all requested information relating to such work, provided the costs of providing such information shall be borne by DEARY.

XVI. JURISDICTION AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho, and venue shall be in the District Court of Latah County.

XVII. BINDING ON SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors and permitted assigns.

XVIII. DELAYS IN CARRYING OUT WORK

CITY shall not be held responsible by reason of any delay in the performance of this Agreement when such delay is primarily caused by some act of God, provided that in the case of delay caused by an act of God, CITY shall give notice to DEARY (in writing, at the earliest possible time) of the causes of such delay. Such a delay shall not be considered to be an interruption of service as designated in Section X of this Agreement. Provided, that if such delay due to an act of God continues for a period of twenty (20) consecutive days, either Party may terminate this Agreement without liability to the other Party. Such termination shall be effective upon written notice provided to the other Party.

XIX. HOLD HARMLESS/INDEMNIFICATION

- A. The Parties are governmental entities subject to statutory and constitutional restrictions concerning the acceptance of liability. The Parties liabilities are further governed by the Idaho Tort Claims Act. It is the intention of the Parties that each will be responsible for its own acts and omissions and those of its officers and employees acting within the course and scope of their employment.
- B. Further, the Parties understand that the Idaho Tort Claims Act, Idaho Code § 6-903(2)(ii), states that each Party's liability is secondary to the obligation of an insurer or indemnitor, or other vehicle not owned or leased by the Party.

XX. TERM

This Agreement shall be in effect for five (5) years commencing on October 1, 2023, and ending September 30, 2028. The Parties may agree to one (1) additional five (5) year term extension ending September 30, 2033 and one (1) additional two (2) year term extension ending September 30, 2035. If either Party intends not to extend the terms beyond fiscal year 2028 or 2033, the Party shall notify the other in writing of this intent one hundred eighty (180) days prior to the expiration of the existing term.

XXI. WASTE FLOW/FLOW CONTROL

DEARY shall enact and maintain in force and effect and use best efforts to enforce applicable ordinances to require all Acceptable Waste, excluding Recyclable Materials, produced within DEARY to be delivered to the Designated Waste Processing Facility.

XXII. RESOLUTION OF DISPUTES

Any dispute arising as to the terms of this Agreement, excepting the compensation to be paid to CITY, as referenced in Section XI, shall be dealt with in the following manner, unless otherwise specified:

- A. The Party seeking resolution of a dispute under this Agreement shall provide the other Party with written notice of the specific nature of the dispute and the section of this Agreement relied on for its position;
- B. The Party receiving the notice shall respond in writing within five (5) working days as to what action it will take to resolve the dispute;
- C. If a dispute continues to exist, the Parties shall meet within ten (10) working days from the date of the receipt of the written response in an attempt to resolve the dispute. DEARY shall be represented by its Mayor (and any other representatives it desires to have present), and CITY shall be represented by its Mayor (and any other representatives it desires to have present), in an attempt to resolve the dispute.
- D. Such resolution of the dispute as the Parties are able to agree upon shall be put in writing and signed by the representatives of each Party and shall become a part of this Agreement.
- E. If a dispute is not resolved through the foregoing procedures, either Party may seek satisfaction through a complaint filed in the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah, which shall be the exclusive forum agreed to by the Parties. (In any matter before the court, the remedy of specific performance shall be the preferred remedy.) In any action filed pursuant to this Agreement, costs and reasonable attorney fees shall be awarded by the court to the prevailing Party.
- F. Any time limits for action under this Agreement may be increased or decreased by mutual agreement of the Parties, said agreements to be in writing.

XXIII. SEVERABILITY

If any provision of this Agreement shall be declared illegal, void or unenforceable, the remaining provisions herein shall not be affected and shall remain in full force and effect.

XXIV. ENTIRE AGREEMENT

This Agreement and its Exhibit(s) constitute(s) the entire agreement and understanding between the Parties and it shall not be considered modified, altered, changed or amended in any respect unless done in accordance with this Agreement, reduced to writing, and signed by the Parties hereto. Any finding by a court of competent jurisdiction that any part or provision of this Agreement is unconstitutional or invalid shall not invalidate any other provision hereof.

XXV. PRIOR AGREEMENTS

This Agreement supersedes any and all prior Agreements between the parties for solid waste disposal services.

CITY, by and through its Mayor, and DEARY, by and through its Mayor, have duly executed this Agreement in duplicate originals, to be effective on the 1st day of October, 2023, notwithstanding the date executed by the Parties hereto.

CITY OF DEARY, IDAHO:

CITY OF MOSCOW, IDAHO

Jason S. Johnson, Mayor

Arthur D. Bettge, Mayor

ATTEST:

ATTEST:

Megan Funke, Deary City Clerk

Laurie M. Hopkins, Moscow City Clerk

EXHIBIT “A”

**SCHEDULE OF REIMBURSEMENT
October 1, 2023 through September 30, 2028**

The City of Deary (DEARY) agrees to pay the City of Moscow (CITY) the amounts shown herein for Solid Waste Disposal, pursuant to this Agreement, and such being delivered to the Solid Waste Processing Facility by DEARY’s collection franchisee or other person, or entity authorized by DEARY.

1. Municipal Solid Waste Disposal (per ton):

FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
\$99.27	\$100.76	\$102.27	\$103.80	\$105.36

2. Non-Municipal Solid Waste Disposal (per ton):

FY 2024	FY 2025	FY 2026	FY 2027	FY2028
\$40.50	\$41.11	\$41.73	\$42.36	\$43.00

3. Mixed Municipal/Non-Municipal Solid Waste Disposal (per ton):

FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
\$70.04	\$71.10	\$72.17	\$73.26	\$74.36

4. Compostable Materials: No Charge

5. Recyclable Materials: No Charge

6. Tire Disposal (per ton): \$225.00 **Tires with Rims (each):** Additional \$2.20

7. Program Cost Rates: \$1.30 per month per billed COUNTY Collection Unit

This rate shall pay for unlimited access by individual DEARY residents to the CITY Recycling Facility, Household Hazardous Waste Facility, Solid Waste Education, and individual access to the Solid Waste Processing Facility; provided, however, that individual access to the Solid Waste Processing Facility shall be assessed a ten dollar (\$10) per load “minimum fee” and shall be billed directly to the resident.

Fiscal year 2024 fee modification shall be effective October 1, 2023. The fee modification date shall be October 1 of each year (example: Fiscal year 2024 fee modification shall be effective October 1, 2023).

EXHIBIT "B"

FIRST AMENDMENT TO AGREEMENT FOR SOLID WASTE TRANSPORTATION AND DISPOSAL BETWEEN CITY OF MOSCOW, IDAHO AND FINLEY-BUTTES LIMITED PARTNERSHIP

THIS FIRST AMENDMENT TO AGREEMENT FOR SOLID WASTE TRANSPORTATION AND DISPOSAL BETWEEN CITY OF MOSCOW, IDAHO AND FINLEY-BUTTES LIMITED PARTNERSHIP (hereinafter "First Amendment"), is made and entered into this 19th day of December, 2022, by and between City of Moscow, Idaho, a municipal corporation of the State of Idaho, 206 East Third Street, Moscow, Idaho, 83843 (hereinafter "CITY"), and Finley-Buttes Limited Partnership, an Oregon limited partnership, (hereinafter "CONTRACTOR").

WITNESSETH:

WHEREAS, CONTRACTOR was selected to own, otherwise provide, and operate Facilities to accept CITY Acceptable Waste in loaded Trailers at CITY's designated Solid Waste Processing Facility (hereinafter "SWPF") and to Transport to and Dispose of that Acceptable Waste at the Disposal Site for CITY through an executed Agreement approved by City Council on October 7, 2019, approved by CONTRACTOR's Board of Directors as evidenced by the Unanimous Written Consent of the General Partner of Finley-Buttes Limited Partnership dated October 16, 2019 and said Agreement was executed by the Parties on November 4, 2019, see Attachment "A" (hereinafter "Agreement"); and

WHEREAS, the Agreement provides for modification upon written agreement signed by the Parties (Article 2, Section 2.13); and

WHEREAS, the Agreement permits CITY, at CITY's sole discretion, to consider CONTRACTOR requests for reimbursements due to extraordinary fuel price increases (Article 8, Section 8.2 A.(4)); and

WHEREAS, the Agreement allows for adjustment of a Service Fee or any other payment or fee at any time by mutual consent of the Parties (Article 8, Section 8.4. E); and

WHEREAS, CONTRACTOR requested fuel relief due to the unanticipated significant increases in diesel fuel costs and the fact that a portion of CONTRACTOR's cost is predicated on fuel usage to transport CITY waste two hundred fourteen (214) miles one way; and

WHEREAS, CITY has determined that the requested fuel relief is reasonable and appropriate and has previously granted fuel relief to CONTRACTOR's predecessor when similar fuel cost volatility occurred; and

WHEREAS, the proposed fuel relief adjustment contained herein provides a fair and predictable method of accounting for fuel cost volatility and provides for both reimbursement of excessive fuel expenses to CONTRACTOR when fuel prices exceed 15% of the adjusted base fuel index, and credits to CITY when fuel prices drop 15% below the adjusted base fuel index as described herein; and

FIRST AMENDMENT TO SOLID WASTE TRANSPORTATION AND DISPOSAL AGREEMENT
FINLEY-BUTTES LIMITED PARTNERSHIP

2022-203 PAGE 1 OF 4

WHEREAS, the Parties intend to modify the Agreement through this First Amendment to accommodate CONTRACTOR'S requested fuel adjustment;

NOW, THEREFORE, it is agreed, for and in consideration of the mutual covenants and promises between the Parties hereto, as follows:

Section 1. All matters stated above are found to be true and correct and are incorporated herein by reference as if copied in their entirety and shall be adopted with the following sections of this First Amendment.

Section 2. It has been determined that a fair and predictable method of accounting for fuel cost volatility is warranted and is in the best interests of both Parties.

Section 3. CITY shall apply fuel cost adjustments as a payment to CONTRACTOR, or CONTRACTOR will apply the fuel cost adjustment as a credit to CITY, when the index changes as defined below.

1. The index to be used when considering fuel price adjustments pursuant to this First Amendment shall be the U.S. Energy Information Administration (EIA) https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=pet&s=emd_epd2d_pte_r5xca_dpg&f=m, Monthly West Coast (PADD 5) Except California No 2 Diesel Retail Prices (Dollars per Gallon).
2. The Current Fuel Index (CFI) shall be the current month's average price per gallon as reported by EIA as referenced herein. The monthly average CFI, shall be used to compute fuel adjustments for the same month that services are performed for CITY. (i.e. October CFI used to compute fuel adjustment for October services). Fuel adjustments will be calculated by the 15th of the month for the prior month's services, and any payments or credits will be applied to the subsequent month's bill (i.e. September's adjustment will be calculated on October 15th and any payments or credits will be applied to October's billing).
3. Fuel adjustments provided by this First Amendment shall be retroactively effective to January 1, 2022, and shall continue thereafter through the duration of the term of the Agreement.
4. Effective January 1, 2022, the initial base fuel index (BFI) shall be Three Dollars and Thirty-One Cents (\$3.31) per gallon. The BFI shall thereafter be adjusted annually on October 1st of each year beginning October 1, 2022 to establish the Adjusted Base Fuel Index (ABFI) by an amount equal to forty percent (40%) of the annual Consumer Price Index (CPI) as published in January of each year by the United States, Bureau of Labor Statistics (Index I.D. CUUR0000SA0, All Urban Consumers, U.S. All items, 1982-84 = 100) as described herein.

$$ABFI = BFI * (CPI \text{ annual adjustment} * 40\%)$$

Where:

BFI = Base Fuel Index

CPI Annual Adjustment = ((current year annual average CPI - prior year annual average CPI) / prior year annual average CPI)
ABFI = adjusted base fuel index

5. A fuel price adjustment will only be made when the CFI varies by more than fifteen percent (15%) from the ABFI. Payments and credits shall be computed as follows:

Contractor payment if CFI is greater than 115% of ABFI:
 $FPA = (CFI - (ABFI * 115\%)) * Q * T$

City credit if CFI is less than 85% of ABFI:
 $FPA = (CFI - (ABFI * 85\%)) * Q * T$

Where:
FPA = fuel price adjustment
Q = 92.44 gallons per trip
T = monthly trips

Section 4. All other terms and conditions of the Agreement that are not amended by this First Amendment shall remain in full force and effect.

Section 5. This First Amendment was adopted by the City Council of the City of Moscow, Idaho and Approved by the Mayor of the City of Moscow on a regularly scheduled meeting dated November 5, 2022.

IN WITNESS WHEREOF, said CONTRACTOR and CITY have caused this First Amendment to be executed on the day and year first above written.

CONTRACTOR

By: Brian Evola
Brian Evola
Finley-Buttes Limited Partnership



CITY

City of Moscow, Idaho

By: Arthur D. Bettge
Arthur D. Bettge, Mayor

ATTEST

Taylor Riedner
Taylor Riedner, Deputy City Clerk

Approved As To Form:
Mia Bautista
Mia Bautista, City Attorney

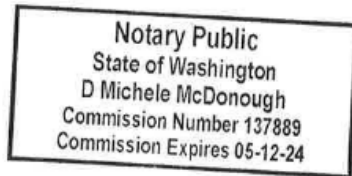
FIRST AMENDMENT TO SOLID WASTE TRANSPORTATION AND DISPOSAL AGREEMENT
FINLEY-BUTTES LIMITED PARTNERSHIP

PAGE 3 OF 4

ACKNOWLEDGMENT

STATE OF Washington) ss:
County of Clark)

On this 12th day of December, 2022, before me, a Notary Public in and for said State, appeared Brian Evola, known to me to be the person named above and acknowledged that he executed the foregoing document as the duly authorized representative for Finley-Buttes Limited Partnership.



D. Michele McDonough
Notary Public for State of Washington
Residing at Clark County
My commission expires: 05-12-24

**SOLID WASTE DISPOSAL AGREEMENT
BETWEEN CITY OF POTLATCH, IDAHO AND
CITY OF MOSCOW, IDAHO**

THIS SOLID WASTE DISPOSAL AGREEMENT BETWEEN CITY OF POTLATCH, IDAHO AND CITY OF MOSCOW, IDAHO (hereinafter "Agreement"), made and entered into this ____ day of _____, 2023, by and between City of Potlatch, Idaho, a municipal corporation of the State of Idaho, 195 6th Street, Potlatch, Idaho, 83855 (hereinafter "POTLATCH"), and the City of Moscow, Idaho, a municipal corporation of the State of Idaho, 206 East Third Street, Moscow, Idaho, 83843 (hereinafter "CITY").

W I T N E S S E T H:

WHEREAS, CITY manages and operates a solid waste and recycling processing and disposal system in Latah County; and

WHEREAS, CITY has offered to provide POTLATCH with solid waste and recycling services and related programs in accordance with Federal, State of Idaho, and local statutes, laws, rules, regulations, and ordinances as defined herein; and

WHEREAS, POTLATCH finds that CITY is qualified and capable to provide such services to POTLATCH; and

WHEREAS, CITY and POTLATCH have an existing solid waste disposal agreement that was executed on February 13, 2017, and which expires on September 30, 2023; and

WHEREAS, POTLATCH wishes for CITY to continue to provide POTLATCH with solid waste processing and disposal and recycling processing services; and

WHEREAS, in 2021, CITY conducted a Sanitation Rate Study to determine the cost of solid waste processing and disposal services and necessary annual adjustments; and

WHEREAS, in 2022, CITY amended its agreement with Finley-Buttes Limited Partnership (CITY's municipal solid waste (MSW) transport and disposal contractor) to provide fuel cost relief through a fuel adjustment formula as set forth in Exhibit "B" attached hereto and incorporated herein;

THEREFORE, CITY and POTLATCH hereby enter into an Agreement for disposal and/or recycling of Acceptable Waste, Demolition/Inert Waste, Compostable Waste and recyclable materials received from residences, businesses, institutions and industries within POTLATCH and for programs related thereto, and for and in consideration of the promises and covenants contained herein, CITY hereby agrees to and with POTLATCH to undertake and execute, for an agreed upon consideration, the herein described work, in a good, substantial and workmanlike manner.

I. DEFINITIONS

For purposes of interpretation of the terms of this Agreement, the following terms, phrases and derivations shall have the following meanings. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The term "shall" is always mandatory and not merely directory.

- A. **ACCEPTABLE WASTE:** That portion of solid waste that is normally disposed of and originating from residential dwellings, businesses, industrial and commercial establishments which consists of household wastes from private residences, commercial waste which originates in wholesale, retail or service establishments such as restaurants, stores, markets, theaters, hotels and warehouses, and institutional waste material originating in schools, hospitals, research institutions and public buildings. Such Acceptable Waste shall include tires, metals and white goods. In no event shall Acceptable Waste include any Hazardous Waste, Infectious Waste or any Unacceptable Waste.
- B. **COLLECTION FRANCHISEE:** The person, persons, corporation or partnership holding a contract and/or franchise issued or granted by POTLATCH authorizing such person, persons, corporation or partnership to operate, conduct or maintain a solid waste collection and disposal system upon or over any highways, streets, roads, alleys and public ways of POTLATCH.
- C. **COLLECTION UNIT:** A POTLATCH resident and/or business receiving solid waste collection services at a place of residence or place of business located within POTLATCH.
 - 1. **Individual Unit:** A dwelling within POTLATCH occupied by a person or group of persons. An individual unit shall be deemed occupied when either occupied or generating solid waste. Each unit within an apartment building, condominium, duplex or mobile home park shall be treated as an individual residential unit, unless served by a mechanical container or compactor.
 - 2. **Commercial Unit:** Each space within POTLATCH occupied by an individual business. A business shall be deemed occupied when either occupied or generating solid waste.
- D. **COMPOSTABLE WASTE:** That Acceptable Waste that has been accepted at the Designated Waste Processing Facility for composting. Such Compostable Waste shall conform to all statutes, rules and regulations of any governmental regulatory agency which pertains to composting.
- E. **DEMOLITION/INERT WASTE:** That Acceptable Waste that has been accepted at the Designated Waste Processing Facility for placement in the demolition/inert landfill. Such Demolition/Inert Waste shall conform to all statutes, rules and regulations of any governmental regulatory agency which pertains to demolition/inert landfiling.

- F. DESIGNATED WASTE PROCESSING FACILITY: The facility or site designated by CITY where Acceptable Waste is compacted, incinerated, landfilled, composted, transferred or otherwise disposed of or treated prior to disposal.
- G. DIRECTOR OF SOLID WASTE SERVICES: The Moscow CITY Supervisor or such other person or persons so designated by the Moscow CITY Supervisor.
- H. HAZARDOUS WASTE: Any chemical, compound, mixture, substance or article which is designated by federal law or regulation, Idaho law or regulation or regulation of any other state when applicable (such as in the case of solid waste exported to or through another state for ultimate disposal) to be 'hazardous', 'dangerous', or 'extremely dangerous'. Hazardous Waste includes any material by reason of its composition or characteristics, is:
1. Toxic or hazardous waste as defined in either the Solid Waste Disposal Act, 42 U.S.C. Section 6901 *et seq*, as replaced, amended, expanded or supplemented, or any laws of similar purpose or effect, and such policies or regulations thereunder, or under relevant state law as replaced, amended, expanded or supplemented, or any laws of similar purpose or effect, and any rules, regulations or policies thereunder, or
 2. Special nuclear or by-products material within the meaning of the Atomic Energy Act of 1954, 42 U.S.C. Section 2011 *et seq*, as replaced, amended, expanded or supplemented, or any laws of similar purpose or effect, and such policies or regulations thereunder, or under relevant state law as replaced, amended, expanded or supplemented, or any laws of similar purpose or effect, and any rules, regulations or policies thereunder; or
 3. Other material which any governmental agency or unit having appropriate jurisdiction shall determine from time to time is harmful, toxic or dangerous or otherwise ineligible for transfer through, transportation by, or disposal from the site; or
 4. Any material which would result in residue being designated as hazardous waste under the above; or
 5. Any waste falling within the definition contained in Idaho Code § 39-4403 (8).
- I. HOUSEHOLD SOLID WASTE: That Acceptable Waste, including garbage or trash produced by ordinary residential units, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas, which fits into a bag, manual container or bundle less than four feet (4') in length. Does not include bulky, Infectious Waste, Hazardous Waste, Unacceptable Waste or any type of solid waste that is not normally collected by POTLATCH's collection Franchisee at individual or commercial units.
- J. INFECTIOUS WASTE: Any material, chemical, compound, mixture, substance or article known to be infectious by the generator or producer or which is designated by the United States Environmental Protection Agency or other appropriate agency of the Federal

Government or the State of Idaho to be "infectious" as that term is commonly defined by or pursuant to law.

- K. **PRODUCER:** Any person, business or other entity which produces solid waste within POTLATCH.
- L. **PUTRESCIBLE WASTE:** Solid waste which has the capacity to become rotten or foul.
- M. **RATE MODIFICATION DATE:** The date whereby all rate adjustments shall become effective. The rate modification date shall be October 1 of each year this Agreement is in force.
- N. **RESOURCE RECOVERY:** The process, including recycling, of obtaining useful material or energy resources from solid waste.
- O. **TRANSFER STATION:** The transfer, processing and transportation facility which has been designated by CITY for the purpose of transferring, processing and/or transporting Transport Waste.
- P. **TRANSPORT WASTE:** That Acceptable Waste which has been accepted at the Designated Waste Processing Facility for loading into transport vehicles for transport to an Ultimate Disposal Site. Such Transport Waste shall conform to the rules of, and be acceptable to, the Ultimate Disposal Site.
- Q. **ULTIMATE DISPOSAL SITE:** Any disposal site chosen by CITY which may ultimately receive Transport Waste from the Designated Waste Processing Facility.
- R. **UNACCEPTABLE WASTE:** That portion of the solid waste such as, but not limited to, explosives, pathological and biological waste, Infectious Waste, Hazardous Waste (except as deemed subject to the Household Hazardous Waste Program as defined in this Agreement), radioactive materials, foundry sand, cesspool waste, human remains, industrial process wastes, motor vehicles (including major motor vehicle parts such as transmissions, rear ends, springs and fenders), agricultural and farm machinery and equipment, marine vessels and major parts thereof or any other large type of machinery or equipment, or that which in the reasonable judgment of the Director may present a substantial endangerment to health or safety, or has a reasonable possibility of adversely affecting the operation of the Designated Waste Processing Facility or the acceptance of Transport Waste by the Ultimate Disposal Site.
- S. **WHITE GOODS.** Appliances such as refrigerators, ranges, water heaters, freezers, unit air conditioners, washing machines, dishwashers, clothes dryers, and other similar domestic and commercial large appliances.

II. SCOPE OF WORK

- A. SERVICE: CITY shall furnish, manage and maintain a system of processing, transportation, and disposal and/or recycling of Acceptable Waste as described herein. CITY shall further provide access to CITY's Designated Waste Processing Facility, Recycling Center, Household Hazardous Waste Program and Solid Waste Education Program to the residents of POTLATCH as provided herein. These services shall include all supervision, materials, equipment, labor and all other items necessary to satisfy the terms of this Agreement.
- B. ACCEPTANCE OF ACCEPTABLE WASTE: CITY shall accept all Acceptable Waste delivered to its Designated Waste Processing Facility by POTLATCH's Collection Franchisee and/or by individual residents of POTLATCH, provided all tipping fees associated with such acceptance are paid. CITY shall provide for the processing of said Acceptable Waste, including landfilling, composting, recycling and/or hauling of said Acceptable Waste (Transport Waste) to the Ultimate Disposal Site.
- C. ACCEPTANCE OF RECYCLABLE MATERIALS: CITY shall accept, process and provide for ultimate disposal of certain recyclable materials delivered to the CITY's Recycling Center by POTLATCH's Collection Franchisee or the individual residents of POTLATCH, provided all tipping fees associated with such acceptance are paid. The types of materials to be accepted at CITY Recycling Center, the amount of money to be paid, if any, for recyclable materials and the types of recyclable materials upon which such money will be paid shall be the sole decision of CITY. Provided, that POTLATCH's Collection Franchisee, other persons authorized by POTLATCH to operate a recycling collection business, or any other person operating a recycling collection business shall not be paid for recyclable materials collected and/or delivered to CITY's Recycling Center. Provided further, that POTLATCH and/or residents of POTLATCH may arrange for the processing of such recyclable materials through any other public or private entity.
- D. HOUSEHOLD HAZARDOUS WASTE PROGRAM: CITY shall provide access to CITY's Household Hazardous Waste Collection Facility to all residents of POTLATCH. The types of materials to be accepted pursuant to such Household Hazardous Waste Collection program and the operation of such program shall be the sole decision of CITY, upon consultation with POTLATCH.
- E. SOLID WASTE EDUCATION PROGRAM: CITY shall include POTLATCH in any and all solid waste education programs established by CITY.
- F. INFECTIOUS WASTE AND POTENTIALLY HARMFUL WASTES:
 - 1. CITY may provide, but is not obligated to provide, disposal programs for Infectious Waste or potentially harmful wastes. In the event that CITY elects to provide such program(s), CITY shall handle such Infectious Waste and potentially harmful wastes in a manner consistent with all applicable regulations.
 - 2. Producers of such wastes shall arrange with CITY, at Producers own expense, for the disposal of such wastes and the charges therefor, and the costs of disposing of such wastes shall be set by CITY.

- G. **UNACCEPTABLE WASTE:** POTLATCH shall not permit its Collection Franchisee or any other person to place Unacceptable Waste into a collection vehicle or container. POTLATCH shall implement a program of training and procedure which is designed to prevent the placing of Unacceptable Waste into collection vehicles or containers. In the event that POTLATCH's Collection Franchisee or any other person delivers unacceptable waste to the Designated Waste Processing Facility, CITY shall, at CITY's sole option, either:
1. Dispose of such Unacceptable Waste in a legally proper manner, and shall charge POTLATCH for all costs thereof, plus actual reasonable administrative charges not to exceed fifteen percent (15%) of such costs; or
 2. Reject such Unacceptable Waste.

III. DESIGNATION OF ULTIMATE DISPOSAL SITE(S)

The Parties understand and agree that CITY shall have the sole and exclusive right to designate the location or locations to which solid waste will be transported for processing and ultimate disposal. Provided that CITY shall consult with POTLATCH and seek input regarding the designation of said ultimate disposal site and shall in good faith consider such input.

IV. HOLIDAYS

The following shall be holidays for purpose of this Agreement:

New Year's Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Day

CITY may decide to observe any or all of the above listed holidays by suspension of disposal or recycling services on a holiday, but such decision in no manner relieves CITY of its obligation to provide such services on the next regularly scheduled service day.

V. COMPLAINTS

All complaints regarding CITY's performance of this Agreement shall be made through POTLATCH to the Director of Solid Waste Services and shall be given prompt and courteous attention. Complaints made directly to CITY from producers in POTLATCH shall be given prompt and courteous attention. CITY shall investigate and respond to such complaints and shall inform POTLATCH in a timely manner of the nature of such complaints and any remedial action taken in response to such complaints.

VI. NOTIFICATION

POTLATCH shall notify all producers to be served hereunder about complaint procedures, rates, fees, regulations, schedules, and changes in the operation of the disposal and or/recycling system by means of press releases and/or publication of pamphlets and/or other means as elected by POTLATCH, and through at least one (1) annual mailing per year. The cost of such notification shall be the responsibility of POTLATCH.

VII. POINT OF CONTACT

All notices between CITY and POTLATCH shall be directed by CITY to the Mayor of POTLATCH, P O Box 525, Potlatch, Idaho, 83855, and by POTLATCH to CITY via the Director of Solid Waste Services, at P O Box 9203, Moscow, Idaho, 83843.

VIII. SALVAGE RIGHTS

CITY shall have the full and exclusive right to all salvageable materials when such materials are accepted at the Designated Waste Processing Facility or Recycling Center pursuant to this Agreement, and CITY shall have the sole right to any and all funds received from the sale of said salvageable materials. Salvaging or scavenging by POTLATCH, its Collection Franchisee(s), or any of its employees or agents after delivery to said Solid Waste Processing Facility or Recycling Center is prohibited.

IX. INSURANCE

- A. CITY shall at all times during the term of this Agreement, maintain, or cause its franchisees to maintain in full force and effect Employer's Liability, Workmen's Compensation, Public Liability and Property Damage insurance, including contractual liability coverage. Additionally, at all times during the term of this Agreement, POTLATCH shall obtain and maintain, or cause its Collection Franchisee to obtain and maintain in full force and effect, public liability insurance and property damage insurance, including contractual liability coverage in the amounts of one million dollars (\$1,000,000.00) per occurrence, and two million dollars (\$2,000,000.00) aggregate. All insurance shall be provided before commencement of work hereunder. CITY and POTLATCH shall annually furnish the other with certificates of insurance or other evidence satisfactory to the other that such insurance has been procured and is in force. Said certificates shall contain the following express provisions:

"This is to certify that the policies of insurance described herein have been issued to the insured for whom this certificate is executed and are in force at this time. In the event of cancellation or material change in a policy affecting the certificate holder, thirty (30) days prior written notice of said cancellation or change shall be provided to the certificate holder."

- B. For purposes of this Agreement, CITY shall carry, and/or shall cause its franchisee(s) or agents to carry, the following types of insurance in at least the limits specified below:

<u>COVERAGE</u>	<u>LIMITS OF LIABILITY</u>
Workmen's Compensation	Statutory
Employer's Liability	\$1,000,000
General Liability	\$1,000,000
except automobile (bodily injury and/or property damage)	each occurrence/ \$2,000,000 aggregate
Automobile bodily injury and/or property damage liability, combined single limit	\$1,000,000 each occurrence

All coverage subject to policy conditions

- C. As an alternative to the above, CITY may, with express written permission of POTLATCH, provide the above public liability and property coverage under a plan of self-insurance. Each insurance policy with respect to public liability insurance may provide for self-insured retention of an amount of two hundred and fifty thousand dollars (\$250,000.00) with the result that CITY is its own insurer to that extent and with the requirement that CITY provides POTLATCH with such evidence of financial responsibility as deemed necessary by POTLATCH.

X. INTERRUPTION OF SERVICE

- A. Interruption of service shall mean that period of time during which services to be provided by CITY pursuant to this Agreement are interrupted, discontinued or substantially reduced, except as excused hereunder, for a period of five (5) consecutive days exclusive of Sundays and Holidays as defined herein; or after the expiration of five (5) days after notice, in accordance with the procedures required herein, is provided to CITY by POTLATCH that POTLATCH is terminating this Agreement because of a breach or default on the part of CITY and until such time as other arrangements can be made by POTLATCH for other such services.
- B. POTLATCH shall have the right to contract with another person, entity or corporation to provide the services set forth herein in the event of an interruption of service by CITY, for the duration of such interruption of service. In the event of interruption of service, all payments to CITY shall be suspended. During the period of such interruption of service, CITY shall be liable to POTLATCH for the reasonable costs of providing such services less the amount of payment POTLATCH would have been liable to make to CITY for providing such services. POTLATCH shall document the actual reasonable costs of providing such services during such interruption of service. CITY shall not be liable for costs which are not supported by such documentation.

- C. In the event that such interruption of service continues for a period of thirty (30) consecutive days, after the expiration of the 30th day, either POTLATCH or CITY may terminate this Agreement. Termination shall be effective not less than one hundred fifty (150) days after service of the notice of termination upon the non-terminating Party. In the event of such termination by CITY, the liability of CITY to POTLATCH shall be limited to the reasonable increased costs (documented as provided herein) of providing such services during such interruption of service prior to such termination.

XI. BASIS AND METHOD OF PAYMENT

- A. Reimbursement. POTLATCH shall pay CITY in accordance herewith the amounts set forth in Exhibit "A" for each service. POTLATCH shall also reimburse CITY for any fuel surcharges incurred on behalf of POTLATCH in accordance with the fuel adjustment agreement between CITY and Finley-Buttes Limited Partnership attached hereto as Exhibit "B". POTLATCH's pro rata share of any fuel surcharge shall be calculated by dividing POTLATCH's tonnage processed within the billing period by the total tonnage processed within the billing period. Should CITY receive a credit in accordance with fuel adjustment agreement, CITY shall calculate and provide POTLATCH with credit in the same manner. The rates specified shall include all costs, fees and other expenses of CITY associated with the performance of its obligations hereunder, including those costs, if any, associated with (a) tipping fees at the Designated Waste Processing Facility; (b) transport to the Ultimate Disposal Site; (c) disposal fees at the Ultimate Disposal Site; and (d) program area costs as shown at Exhibit "A".
- B. Modification of Rates.
1. Annual Rate Adjustment. The rates for services provided under this agreement shall be escalated annually by one point five percent (1.5%) effective upon October 1 of each year of the initial term as shown in Exhibit "A". Rates beyond the initial five (5) year term shall be determined through future sanitation rate studies and shall be adjusted prior to the commencement of any future term extension.
 2. CITY's Request.
 - a. CITY shall have the right to petition POTLATCH at any time for additional fee adjustments on the basis of unusual changes in the cost of operations i.e., revised federal and State of Idaho laws affecting this Agreement, which require mandatory compliance by the CITY resulting in increased operating costs to CITY, (as proven by full documentation of such increased operating costs as requested by POTLATCH). All such requests shall be fully developed setting forth the changes requested, existing costs, summary of estimated change in costs and the amount of fee change requested. POTLATCH shall respond to such requests within thirty (30) days. If the Parties are unable to reach agreement on a

proposed rate adjustment, either Party may invoke the provisions of paragraph B(4), below.

- b. POTLATCH understands that the cost of CITY's operations and services to be provided hereunder are subject to certain agreements (i.e., a Franchise Agreement and Hauling and Disposal Agreement). POTLATCH has had the opportunity to review and analyze such agreements. CITY shall have the right to petition for a fee adjustment from POTLATCH, and POTLATCH shall be obligated to grant such fee adjustment, when such adjustment is made by CITY in response to a fee adjustment required by CITY's contractors pursuant to such agreements. All such requests shall be fully developed setting forth the changes requested, existing costs, summary of estimated change in costs and the amount of fee change requested. POTLATCH shall respond to such requests within thirty (30) days. All fee adjustments made pursuant to this Section XI.B.2.b. shall be limited to POTLATCH's pro-rata share of the actual fee adjustment(s) required of CITY.
3. POTLATCH's Request. POTLATCH may petition CITY for a change in either the level or nature of the service provided, and the resulting proposed fee adjustment. The notice shall include a listing by POTLATCH of the type or nature of documentation, analysis or audit it is relying upon in support of the proposed change. Within sixty (60) days following receipt of such a request, unless some other time period is mutually agreed to by the Parties, CITY shall notify POTLATCH as to whether it agrees with the modification of level and/or nature of service and/or the fee adjustment. Nothing herein shall be construed to require CITY to consent to such change in the nature and/or level of service. In the event CITY does not agree with POTLATCH's fee adjustment, it shall also provide POTLATCH with copies of all documentation, analysis or audit, on which CITY relies with CITY's written response. If CITY agrees with the fee adjustment, such adjustment will become effective upon POTLATCH giving written notice to CITY to implement the change in the level and/or nature of service. In the event that POTLATCH does not implement such changes in the nature and/or level of service (after CITY has agreed to such changes), POTLATCH shall reimburse CITY for its costs, plus actual reasonable administrative charges not to exceed fifteen percent (15%) of such costs, incurred in responding to POTLATCH's request for such adjustment. It is further acknowledged that this paragraph shall not operate so as to terminate the material provisions and intent of this Agreement; that is, CITY shall provide the solid waste disposal services set forth herein to POTLATCH during the term of this Agreement while deciding on POTLATCH's petition for change.
4. Arbitration of Disputes. In the event that the Parties cannot agree upon compensation for the work to be performed, the Parties agree that such a dispute shall be subject to binding arbitration pursuant to the rules of the Uniform Arbitration Act. The Parties shall mutually select a disinterested, non-local arbitrator. In the event the Parties are unable to mutually agree, each Party shall designate a disinterested, non-local individual and these two (2) designees shall then select the arbitrator. All designations of arbitrator or designee shall occur within ten (10) days of notice of dispute being delivered by one (1) Party to the other, and designees shall select the arbitrator within

ten (10) days of their designation. The decision of the arbitrator shall be binding on both Parties. The non-prevailing Party, as determined by the arbitrator, shall pay all costs of the arbitration and the prevailing Party shall be awarded its reasonable costs and reasonable attorney fees incurred in participating in such arbitration, said costs and attorney fees shall be limited to the amount of ten thousand dollars (\$10,000.00).

5. Effective Date. The fee adjustments contemplated in subparagraphs (2) and (3) above, shall become effective on the date(s) that the changes in service commence, or on the date such contractual rates change.
 6. Emergency Services. Should additional services be required in an emergency, above and beyond those contemplated in this Agreement, POTLATCH may order reasonable delivery of services and POTLATCH shall pay the verifiable costs of such services, plus actual reasonable administrative charges not to exceed fifteen percent (15%) of such costs.
- C. Payment. CITY shall be responsible for billing POTLATCH monthly for the services set forth herein. POTLATCH shall remit payment to CITY by the 20th day of each month following receipt of CITY's billing. In the event that POTLATCH fails to remit payment to CITY by the 20th day of each month for such billing, POTLATCH shall pay to CITY, in addition to the amount of the billing, a late fee in the amount of one percent (1%) of the amount of the billing per day beyond the due date. In addition to this late fee, in the event that POTLATCH fails to remit payment to CITY within fourteen (14) days from the due date, CITY may, in its discretion, without penalty or determination that POTLATCH is in breach of this Agreement, suspend its obligations and services to be provided hereunder until such charges are paid.

XII. TITLE TO WASTE

Title to all Acceptable Waste accepted at CITY's Designated Waste Processing Facility or Recycling Center, shall pass to CITY when so accepted. Title to Hazardous Wastes, potentially harmful wastes, Infectious Wastes or other Unacceptable Waste shall not vest with CITY, but shall remain in the Producer. POTLATCH further agrees that it shall have the responsibility to identify the Producer of such wastes.

XIII. WAIVER

The failure of POTLATCH or CITY to insist on strict performance of any of the terms and conditions hereof shall not be deemed a waiver of the rights or remedies that POTLATCH or CITY may have regarding that specific instance, and shall not be deemed a waiver of any subsequent breach or default in any of the terms and conditions hereof. Making or receiving payments pursuant to this Agreement during the existence of a dispute shall not be deemed to and shall not constitute a waiver of any of the claims or defenses of the Party making such payment.

XIV. ADHERENCE TO LAWS

CITY and POTLATCH shall at all times comply with and adhere to applicable laws governing the performance of the services described herein. Non-compliance with applicable statutes, rules and regulations by CITY or POTLATCH shall act as a breach of this Agreement and shall subject the non-complying Party to liability therefore. CITY and POTLATCH shall report violations of such laws as soon as practicable.

XV. RECORDS AND INSPECTION

A. Records

CITY shall maintain such records as may be specified herein or may be necessary to document the quantity of solid waste accepted and processed in the performance of this Agreement separately from that solid waste received by CITY pursuant to any other agreement with any governmental entity, business or person and to document the time and date of performance of services hereunder. Actual scale records shall be utilized in determining the quantity of solid waste collected and transported hereunder unless the Parties hereafter agree to use a system of estimation. Such actual scale weights shall be obtained utilizing the scales maintained at the Designated Waste Processing Facility. CITY shall make all documents relating to the performance of work hereunder, including scale records, available to POTLATCH within fourteen (14) working days of receiving written notice detailing the documents requested. This time period may be extended where extenuating circumstances exist. Should POTLATCH desire that records be maintained other than as provided above, POTLATCH may petition CITY to cause such records to be maintained, and CITY, in its sole discretion, may cause such records to be maintained, provide that the cost of maintaining such records shall be borne by POTLATCH. Further the Parties agree that CITY shall provide POTLATCH, with each monthly billing, the following information as to the solid waste received and processed hereunder during the preceding month.

1. Tonnage of Acceptable Waste broken down into categories of:
 - a. Transport Waste;
 - b. Inert/Demolition/Compost Waste;
 - c. Recyclable materials received from POTLATCH's collection franchisee.
2. The number of White Goods accepted at the Designated Waste Processing Facility, including the names and addresses of the Producers of such White Goods. Provided that any additional cost to CITY incurred in providing such information shall be borne by POTLATCH.

B. Inspection

POTLATCH reserves the right to conduct on-site inspections of CITY's operations (including, without limitation, the actual weighing of solid waste) without notice and at

reasonable times and in a reasonable manner. The costs of such inspections, including any increase in CITY's cost of operations as a result of accommodating such inspections shall be borne by POTLATCH. CITY shall furnish POTLATCH with all requested information relating to such work, provided the costs of providing such information shall be borne by POTLATCH.

XVI. JURISDICTION AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho, and venue shall be in the District Court of Latah County.

XVII. BINDING ON SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors and permitted assigns.

XVIII. DELAYS IN CARRYING OUT WORK

CITY shall not be held responsible by reason of any delay in the performance of this Agreement when such delay is primarily caused by some act of God, provided that in the case of delay caused by an act of God, CITY shall give notice to POTLATCH (in writing, at the earliest possible time) of the causes of such delay. Such a delay shall not be considered to be an interruption of service as designated in Section X of this Agreement. Provided, that if such delay due to an act of God continues for a period of twenty (20) consecutive days, either Party may terminate this Agreement without liability to the other Party. Such termination shall be effective upon written notice provided to the other Party.

XIX. HOLD HARMLESS/INDEMNIFICATION

- A. The Parties are governmental entities subject to statutory and constitutional restrictions concerning the acceptance of liability. The Parties liabilities are further governed by the Idaho Tort Claims Act. It is the intention of the Parties that each will be responsible for its own acts and omissions and those of its officers and employees acting within the course and scope of their employment.
- B. Further, the Parties understand that the Idaho Tort Claims Act, Idaho Code § 6-903(2)(ii), states that each Party's liability is secondary to the obligation of an insurer or indemnitor, or other vehicle not owned or leased by the Party.

XX. TERM

This Agreement shall be in effect for five (5) years commencing on October 1, 2023, and ending September 30, 2028. The Parties may agree to one (1) additional five (5) year term extension ending

September 30, 2033 and one (1) additional two (2) year term extension ending September 30, 2035. If either Party intends not to extend the terms beyond fiscal year 2028 or 2033, the Party shall notify the other in writing of this intent one hundred eighty (180) days prior to the expiration of the existing term.

XXI. WASTE FLOW/FLOW CONTROL

POTLATCH shall enact and maintain in force and effect and use best efforts to enforce applicable ordinances to require all Acceptable Waste, excluding Recyclable Materials, produced within POTLATCH to be delivered to the Designated Waste Processing Facility.

XXII. RESOLUTION OF DISPUTES

Any dispute arising as to the terms of this Agreement, excepting the compensation to be paid to CITY, as referenced in Section XI, shall be dealt with in the following manner, unless otherwise specified:

- A. The Party seeking resolution of a dispute under this Agreement shall provide the other Party with written notice of the specific nature of the dispute and the section of this Agreement relied on for its position;
- B. The Party receiving the notice shall respond in writing within five (5) working days as to what action it will take to resolve the dispute;
- C. If a dispute continues to exist, the Parties shall meet within ten (10) working days from the date of the receipt of the written response in an attempt to resolve the dispute. POTLATCH shall be represented by its Mayor (and any other representatives it desires to have present), and CITY shall be represented by its Mayor (and any other representatives it desires to have present), in an attempt to resolve the dispute.
- D. Such resolution of the dispute as the Parties are able to agree upon shall be put in writing and signed by the representatives of each Party and shall become a part of this Agreement.
- E. If a dispute is not resolved through the foregoing procedures, either Party may seek satisfaction through a complaint filed in the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah, which shall be the exclusive forum agreed to by the Parties. (In any matter before the court, the remedy of specific performance shall be the preferred remedy.) In any action filed pursuant to this Agreement, costs and reasonable attorney fees shall be awarded by the court to the prevailing Party.
- F. Any time limits for action under this Agreement may be increased or decreased by mutual agreement of the Parties, said agreements to be in writing.

XXIII. SEVERABILITY

If any provision of this Agreement shall be declared illegal, void or unenforceable, the remaining provisions herein shall not be affected and shall remain in full force and effect.

XXIV. ENTIRE AGREEMENT

This Agreement and its Exhibit(s) constitute(s) the entire agreement and understanding between the Parties and it shall not be considered modified, altered, changed or amended in any respect unless done in accordance with this Agreement, reduced to writing, and signed by the Parties hereto. Any finding by a court of competent jurisdiction that any part or provision of this Agreement is unconstitutional or invalid shall not invalidate any other provision hereof.

XXV. PRIOR AGREEMENTS

This Agreement supersedes any and all prior Agreements between the parties for solid waste disposal services.

CITY, by and through its Mayor, and POTLATCH, by and through its Mayor, have duly executed this Agreement in duplicate originals, to be effective on the 1st day of October, 2023, notwithstanding the date executed by the Parties hereto.

CITY OF POTLATCH, IDAHO:

CITY OF MOSCOW, IDAHO

David Brown, Mayor

Arthur D. Bettge, Mayor

ATTEST:

ATTEST:

Harmony Nowack, Potlatch City Clerk

Laurie M. Hopkins, Moscow City Clerk

EXHIBIT “A”

**SCHEDULE OF REIMBURSEMENT
October 1, 2023 through September 30, 2028**

The City of Potlatch (POTLATCH) agrees to pay the City of Moscow (CITY) the amounts shown herein for Solid Waste Disposal, pursuant to this Agreement, and such being delivered to the Solid Waste Processing Facility by POTLATCH’s collection franchisee or other person, or entity authorized by POTLATCH.

1. Municipal Solid Waste Disposal (per ton):

FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
\$99.27	\$100.76	\$102.27	\$103.80	\$105.36

2. Non-Municipal Solid Waste Disposal (per ton):

FY 2024	FY 2025	FY 2026	FY 2027	FY2028
\$40.50	\$41.11	\$41.73	\$42.36	\$43.00

3. Mixed Municipal/Non-Municipal Solid Waste Disposal (per ton):

FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
\$70.04	\$71.10	\$72.17	\$73.26	\$74.36

4. Compostable Materials: No Charge

5. Recyclable Materials: No Charge

6. Tire Disposal (per ton): \$225.00 **Tires with Rims (each):** Additional \$2.20

7. Program Cost Rates: \$1.30 per month per billed COUNTY Collection Unit

This rate shall pay for unlimited access by individual POTLATCH residents to the CITY Recycling Facility, Household Hazardous Waste Facility, Solid Waste Education, and individual access to the Solid Waste Processing Facility; provided, however, that individual access to the Solid Waste Processing Facility shall be assessed a ten dollar (\$10) per load “minimum fee” and shall be billed directly to the resident.

Fiscal year 2024 fee modification shall be effective October 1, 2023. The fee modification date shall be October 1 of each year (example: Fiscal year 2024 fee modification shall be effective October 1, 2023).

EXHIBIT "B"

FIRST AMENDMENT TO AGREEMENT FOR SOLID WASTE TRANSPORTATION AND DISPOSAL BETWEEN CITY OF MOSCOW, IDAHO AND FINLEY-BUTTES LIMITED PARTNERSHIP

THIS FIRST AMENDMENT TO AGREEMENT FOR SOLID WASTE TRANSPORTATION AND DISPOSAL BETWEEN CITY OF MOSCOW, IDAHO AND FINLEY-BUTTES LIMITED PARTNERSHIP (hereinafter "First Amendment"), is made and entered into this 19th day of December, 2022, by and between City of Moscow, Idaho, a municipal corporation of the State of Idaho, 206 East Third Street, Moscow, Idaho, 83843 (hereinafter "CITY"), and Finley-Buttes Limited Partnership, an Oregon limited partnership, (hereinafter "CONTRACTOR").

WITNESSETH:

WHEREAS, CONTRACTOR was selected to own, otherwise provide, and operate Facilities to accept CITY Acceptable Waste in loaded Trailers at CITY's designated Solid Waste Processing Facility (hereinafter "SWPF") and to Transport to and Dispose of that Acceptable Waste at the Disposal Site for CITY through an executed Agreement approved by City Council on October 7, 2019, approved by CONTRACTOR's Board of Directors as evidenced by the Unanimous Written Consent of the General Partner of Finley-Buttes Limited Partnership dated October 16, 2019 and said Agreement was executed by the Parties on November 4, 2019, see Attachment "A" (hereinafter "Agreement"); and

WHEREAS, the Agreement provides for modification upon written agreement signed by the Parties (Article 2, Section 2.13); and

WHEREAS, the Agreement permits CITY, at CITY's sole discretion, to consider CONTRACTOR requests for reimbursements due to extraordinary fuel price increases (Article 8, Section 8.2 A.(4)); and

WHEREAS, the Agreement allows for adjustment of a Service Fee or any other payment or fee at any time by mutual consent of the Parties (Article 8, Section 8.4. E); and

WHEREAS, CONTRACTOR requested fuel relief due to the unanticipated significant increases in diesel fuel costs and the fact that a portion of CONTRACTOR's cost is predicated on fuel usage to transport CITY waste two hundred fourteen (214) miles one way; and

WHEREAS, CITY has determined that the requested fuel relief is reasonable and appropriate and has previously granted fuel relief to CONTRACTOR's predecessor when similar fuel cost volatility occurred; and

WHEREAS, the proposed fuel relief adjustment contained herein provides a fair and predictable method of accounting for fuel cost volatility and provides for both reimbursement of excessive fuel expenses to CONTRACTOR when fuel prices exceed 15% of the adjusted base fuel index, and credits to CITY when fuel prices drop 15% below the adjusted base fuel index as described herein; and

FIRST AMENDMENT TO SOLID WASTE TRANSPORTATION AND DISPOSAL AGREEMENT
FINLEY-BUTTES LIMITED PARTNERSHIP

2022-203 PAGE 1 OF 4

WHEREAS, the Parties intend to modify the Agreement through this First Amendment to accommodate CONTRACTOR'S requested fuel adjustment;

NOW, THEREFORE, it is agreed, for and in consideration of the mutual covenants and promises between the Parties hereto, as follows:

Section 1. All matters stated above are found to be true and correct and are incorporated herein by reference as if copied in their entirety and shall be adopted with the following sections of this First Amendment.

Section 2. It has been determined that a fair and predictable method of accounting for fuel cost volatility is warranted and is in the best interests of both Parties.

Section 3. CITY shall apply fuel cost adjustments as a payment to CONTRACTOR, or CONTRACTOR will apply the fuel cost adjustment as a credit to CITY, when the index changes as defined below.

1. The index to be used when considering fuel price adjustments pursuant to this First Amendment shall be the U.S. Energy Information Administration (EIA) https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=pet&s=emd_epd2d_pte_r5xca_dpg&f=m, Monthly West Coast (PADD 5) Except California No 2 Diesel Retail Prices (Dollars per Gallon).
2. The Current Fuel Index (CFI) shall be the current month's average price per gallon as reported by EIA as referenced herein. The monthly average CFI, shall be used to compute fuel adjustments for the same month that services are performed for CITY. (i.e. October CFI used to compute fuel adjustment for October services). Fuel adjustments will be calculated by the 15th of the month for the prior month's services, and any payments or credits will be applied to the subsequent month's bill (i.e. September's adjustment will be calculated on October 15th and any payments or credits will be applied to October's billing).
3. Fuel adjustments provided by this First Amendment shall be retroactively effective to January 1, 2022, and shall continue thereafter through the duration of the term of the Agreement.
4. Effective January 1, 2022, the initial base fuel index (BFI) shall be Three Dollars and Thirty-One Cents (\$3.31) per gallon. The BFI shall thereafter be adjusted annually on October 1st of each year beginning October 1, 2022 to establish the Adjusted Base Fuel Index (ABFI) by an amount equal to forty percent (40%) of the annual Consumer Price Index (CPI) as published in January of each year by the United States, Bureau of Labor Statistics (Index I.D. CUUR0000SA0, All Urban Consumers, U.S. All items, 1982-84 = 100) as described herein.

$$ABFI = BFI * (CPI \text{ annual adjustment} * 40\%)$$

Where:

BFI = Base Fuel Index

CPI Annual Adjustment = ((current year annual average CPI - prior year annual average CPI) / prior year annual average CPI)
ABFI = adjusted base fuel index

5. A fuel price adjustment will only be made when the CFI varies by more than fifteen percent (15%) from the ABFI. Payments and credits shall be computed as follows:

Contractor payment if CFI is greater than 115% of ABFI:
 $FPA = (CFI - (ABFI * 115\%)) * Q * T$

City credit if CFI is less than 85% of ABFI:
 $FPA = (CFI - (ABFI * 85\%)) * Q * T$

Where:
FPA = fuel price adjustment
Q = 92.44 gallons per trip
T = monthly trips

Section 4. All other terms and conditions of the Agreement that are not amended by this First Amendment shall remain in full force and effect.

Section 5. This First Amendment was adopted by the City Council of the City of Moscow, Idaho and Approved by the Mayor of the City of Moscow on a regularly scheduled meeting dated November 5, 2022.

IN WITNESS WHEREOF, said CONTRACTOR and CITY have caused this First Amendment to be executed on the day and year first above written.

CONTRACTOR

By: Brian Evola
Brian Evola
Finley-Buttes Limited Partnership



CITY

City of Moscow, Idaho

By: Arthur D. Bettge
Arthur D. Bettge, Mayor

ATTEST

Taylor Riedner
Taylor Riedner, Deputy City Clerk

Approved As To Form:
Mia Bautista
Mia Bautista, City Attorney

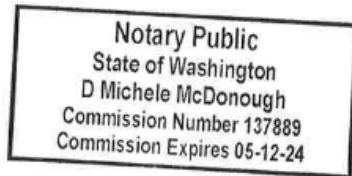
FIRST AMENDMENT TO SOLID WASTE TRANSPORTATION AND DISPOSAL AGREEMENT
FINLEY-BUTTES LIMITED PARTNERSHIP

PAGE 3 OF 4

ACKNOWLEDGMENT

STATE OF Washington) ss:
County of Clark)

On this 12th day of December, 2022, before me, a Notary Public in and for said State, appeared Brian Evola, known to me to be the person named above and acknowledged that he executed the foregoing document as the duly authorized representative for Finley-Buttes Limited Partnership.



D. Michele McDonough
Notary Public for State of Washington
Residing at Clark County
My commission expires: 05-12-24

**SOLID WASTE DISPOSAL AGREEMENT
BETWEEN CITY OF BOVILL, IDAHO AND
CITY OF MOSCOW, IDAHO**

THIS SOLID WASTE DISPOSAL AGREEMENT BETWEEN CITY OF BOVILL, IDAHO AND CITY OF MOSCOW, IDAHO (hereinafter "Agreement"), made and entered into this ____ day of _____, 2023, by and between City of Bovill, Idaho, a municipal corporation of the State of Idaho, 100 Railroad Ave., Bovill, Idaho, 83806 (hereinafter "BOVILL"), and the City of Moscow, Idaho, a municipal corporation of the State of Idaho, 206 East Third Street, Moscow, Idaho, 83843 (hereinafter "CITY").

W I T N E S S E T H:

WHEREAS, CITY manages and operates a solid waste and recycling processing and disposal system in Latah County; and

WHEREAS, CITY has offered to provide BOVILL with solid waste and recycling services and related programs in accordance with Federal, State of Idaho, and local statutes, laws, rules, regulations, and ordinances as defined herein; and

WHEREAS, BOVILL finds that CITY is qualified and capable to provide such services to BOVILL; and

WHEREAS, CITY and BOVILL have an existing solid waste disposal agreement that was executed on April 12, 2017, and which expires on September 30, 2023; and

WHEREAS, BOVILL wishes for CITY to continue to provide BOVILL with solid waste processing and disposal and recycling processing services; and

WHEREAS, in 2021, CITY conducted a Sanitation Rate Study to determine the cost of solid waste processing and disposal services and necessary annual adjustments; and

WHEREAS, in 2022, CITY amended its agreement with Finley-Buttes Limited Partnership (CITY's municipal solid waste (MSW) transport and disposal contractor) to provide fuel cost relief through a fuel adjustment formula as set forth in Exhibit "B" attached hereto and incorporated herein;

THEREFORE, CITY and BOVILL hereby enter into an Agreement for disposal and/or recycling of Acceptable Waste, Demolition/Inert Waste, Compostable Waste and recyclable materials received from residences, businesses, institutions and industries within BOVILL and for programs related thereto, and for and in consideration of the promises and covenants contained herein, CITY hereby agrees to and with BOVILL to undertake and execute, for an agreed upon consideration, the herein described work, in a good, substantial and workmanlike manner.

I. DEFINITIONS

For purposes of interpretation of the terms of this Agreement, the following terms, phrases and derivations shall have the following meanings. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The term "shall" is always mandatory and not merely directory.

- A. **ACCEPTABLE WASTE:** That portion of solid waste that is normally disposed of and originating from residential dwellings, businesses, industrial and commercial establishments which consists of household wastes from private residences, commercial waste which originates in wholesale, retail or service establishments such as restaurants, stores, markets, theaters, hotels and warehouses, and institutional waste material originating in schools, hospitals, research institutions and public buildings. Such Acceptable Waste shall include tires, metals and white goods. In no event shall Acceptable Waste include any Hazardous Waste, Infectious Waste or any Unacceptable Waste.
- B. **COLLECTION FRANCHISEE:** The person, persons, corporation or partnership holding a contract and/or franchise issued or granted by BOVILL authorizing such person, persons, corporation or partnership to operate, conduct or maintain a solid waste collection and disposal system upon or over any highways, streets, roads, alleys and public ways of BOVILL.
- C. **COLLECTION UNIT:** A BOVILL resident and/or business receiving solid waste collection services at a place of residence or place of business located within BOVILL.
 - 1. **Individual Unit:** A dwelling within BOVILL occupied by a person or group of persons. An individual unit shall be deemed occupied when either occupied or generating solid waste. Each unit within an apartment building, condominium, duplex or mobile home park shall be treated as an individual residential unit, unless served by a mechanical container or compactor.
 - 2. **Commercial Unit:** Each space within BOVILL occupied by an individual business. A business shall be deemed occupied when either occupied or generating solid waste.
- D. **COMPOSTABLE WASTE:** That Acceptable Waste that has been accepted at the Designated Waste Processing Facility for composting. Such Compostable Waste shall conform to all statutes, rules and regulations of any governmental regulatory agency which pertains to composting.
- E. **DEMOLITION/INERT WASTE:** That Acceptable Waste that has been accepted at the Designated Waste Processing Facility for placement in the demolition/inert landfill. Such Demolition/Inert Waste shall conform to all statutes, rules and regulations of any governmental regulatory agency which pertains to demolition/inert landfilling.

- F. DESIGNATED WASTE PROCESSING FACILITY: The facility or site designated by CITY where Acceptable Waste is compacted, incinerated, landfilled, composted, transferred or otherwise disposed of or treated prior to disposal.
- G. DIRECTOR OF SOLID WASTE SERVICES: The Moscow CITY Supervisor or such other person or persons so designated by the Moscow CITY Supervisor.
- H. HAZARDOUS WASTE: Any chemical, compound, mixture, substance or article which is designated by federal law or regulation, Idaho law or regulation or regulation of any other state when applicable (such as in the case of solid waste exported to or through another state for ultimate disposal) to be 'hazardous', 'dangerous', or 'extremely dangerous'. Hazardous Waste includes any material by reason of its composition or characteristics, is:
1. Toxic or hazardous waste as defined in either the Solid Waste Disposal Act, 42 U.S.C. Section 6901 *et seq*, as replaced, amended, expanded or supplemented, or any laws of similar purpose or effect, and such policies or regulations thereunder, or under relevant state law as replaced, amended, expanded or supplemented, or any laws of similar purpose or effect, and any rules, regulations or policies thereunder, or
 2. Special nuclear or by-products material within the meaning of the Atomic Energy Act of 1954, 42 U.S.C. Section 2011 *et seq*, as replaced, amended, expanded or supplemented, or any laws of similar purpose or effect, and such policies or regulations thereunder, or under relevant state law as replaced, amended, expanded or supplemented, or any laws of similar purpose or effect, and any rules, regulations or policies thereunder; or
 3. Other material which any governmental agency or unit having appropriate jurisdiction shall determine from time to time is harmful, toxic or dangerous or otherwise ineligible for transfer through, transportation by, or disposal from the site; or
 4. Any material which would result in residue being designated as hazardous waste under the above; or
 5. Any waste falling within the definition contained in Idaho Code § 39-4403 (8).
- I. HOUSEHOLD SOLID WASTE: That Acceptable Waste, including garbage or trash produced by ordinary residential units, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas, which fits into a bag, manual container or bundle less than four feet (4') in length. Does not include bulky, Infectious Waste, Hazardous Waste, Unacceptable Waste or any type of solid waste that is not normally collected by BOVILL's collection Franchisee at individual or commercial units.
- J. INFECTIOUS WASTE: Any material, chemical, compound, mixture, substance or article known to be infectious by the generator or producer or which is designated by the United States Environmental Protection Agency or other appropriate agency of the Federal

Government or the State of Idaho to be "infectious" as that term is commonly defined by or pursuant to law.

- K. **PRODUCER:** Any person, business or other entity which produces solid waste within BOVILL.
- L. **PUTRESCIBLE WASTE:** Solid waste which has the capacity to become rotten or foul.
- M. **RATE MODIFICATION DATE:** The date whereby all rate adjustments shall become effective. The rate modification date shall be October 1 of each year this Agreement is in force.
- N. **RESOURCE RECOVERY:** The process, including recycling, of obtaining useful material or energy resources from solid waste.
- O. **TRANSFER STATION:** The transfer, processing and transportation facility which has been designated by CITY for the purpose of transferring, processing and/or transporting Transport Waste.
- P. **TRANSPORT WASTE:** That Acceptable Waste which has been accepted at the Designated Waste Processing Facility for loading into transport vehicles for transport to an Ultimate Disposal Site. Such Transport Waste shall conform to the rules of, and be acceptable to, the Ultimate Disposal Site.
- Q. **ULTIMATE DISPOSAL SITE:** Any disposal site chosen by CITY which may ultimately receive Transport Waste from the Designated Waste Processing Facility.
- R. **UNACCEPTABLE WASTE:** That portion of the solid waste such as, but not limited to, explosives, pathological and biological waste, Infectious Waste, Hazardous Waste (except as deemed subject to the Household Hazardous Waste Program as defined in this Agreement), radioactive materials, foundry sand, cesspool waste, human remains, industrial process wastes, motor vehicles (including major motor vehicle parts such as transmissions, rear ends, springs and fenders), agricultural and farm machinery and equipment, marine vessels and major parts thereof or any other large type of machinery or equipment, or that which in the reasonable judgment of the Director may present a substantial endangerment to health or safety, or has a reasonable possibility of adversely affecting the operation of the Designated Waste Processing Facility or the acceptance of Transport Waste by the Ultimate Disposal Site.
- S. **WHITE GOODS.** Appliances such as refrigerators, ranges, water heaters, freezers, unit air conditioners, washing machines, dishwashers, clothes dryers, and other similar domestic and commercial large appliances.

II. SCOPE OF WORK

- A. SERVICE: CITY shall furnish, manage and maintain a system of processing, transportation, and disposal and/or recycling of Acceptable Waste as described herein. CITY shall further provide access to CITY's Designated Waste Processing Facility, Recycling Center, Household Hazardous Waste Program and Solid Waste Education Program to the residents of BOVILL as provided herein. These services shall include all supervision, materials, equipment, labor and all other items necessary to satisfy the terms of this Agreement.
- B. ACCEPTANCE OF ACCEPTABLE WASTE: CITY shall accept all Acceptable Waste delivered to its Designated Waste Processing Facility by BOVILL's Collection Franchisee and/or by individual residents of BOVILL, provided all tipping fees associated with such acceptance are paid. CITY shall provide for the processing of said Acceptable Waste, including landfilling, composting, recycling and/or hauling of said Acceptable Waste (Transport Waste) to the Ultimate Disposal Site.
- C. ACCEPTANCE OF RECYCLABLE MATERIALS: CITY shall accept, process and provide for ultimate disposal of certain recyclable materials delivered to the CITY's Recycling Center by BOVILL's Collection Franchisee or the individual residents of BOVILL, provided all tipping fees associated with such acceptance are paid. The types of materials to be accepted at CITY Recycling Center, the amount of money to be paid, if any, for recyclable materials and the types of recyclable materials upon which such money will be paid shall be the sole decision of CITY. Provided, that BOVILL's Collection Franchisee, other persons authorized by BOVILL to operate a recycling collection business, or any other person operating a recycling collection business shall not be paid for recyclable materials collected and/or delivered to CITY's Recycling Center. Provided further, that BOVILL and/or residents of BOVILL may arrange for the processing of such recyclable materials through any other public or private entity.
- D. HOUSEHOLD HAZARDOUS WASTE PROGRAM: CITY shall provide access to CITY's Household Hazardous Waste Collection Facility to all residents of BOVILL. The types of materials to be accepted pursuant to such Household Hazardous Waste Collection program and the operation of such program shall be the sole decision of CITY, upon consultation with BOVILL.
- E. SOLID WASTE EDUCATION PROGRAM: CITY shall include BOVILL in any and all solid waste education programs established by CITY.
- F. INFECTIOUS WASTE AND POTENTIALLY HARMFUL WASTES:
 - 1. CITY may provide, but is not obligated to provide, disposal programs for Infectious Waste or potentially harmful wastes. In the event that CITY elects to provide such program(s), CITY shall handle such Infectious Waste and potentially harmful wastes in a manner consistent with all applicable regulations.
 - 2. Producers of such wastes shall arrange with CITY, at Producers own expense, for the disposal of such wastes and the charges therefor, and the costs of disposing of such wastes shall be set by CITY.

- G. **UNACCEPTABLE WASTE:** BOVILL shall not permit its Collection Franchisee or any other person to place Unacceptable Waste into a collection vehicle or container. BOVILL shall implement a program of training and procedure which is designed to prevent the placing of Unacceptable Waste into collection vehicles or containers. In the event that BOVILL's Collection Franchisee or any other person delivers unacceptable waste to the Designated Waste Processing Facility, CITY shall, at CITY's sole option, either:
1. Dispose of such Unacceptable Waste in a legally proper manner, and shall charge BOVILL for all costs thereof, plus actual reasonable administrative charges not to exceed fifteen percent (15%) of such costs; or
 2. Reject such Unacceptable Waste.

III. DESIGNATION OF ULTIMATE DISPOSAL SITE(S)

The Parties understand and agree that CITY shall have the sole and exclusive right to designate the location or locations to which solid waste will be transported for processing and ultimate disposal. Provided that CITY shall consult with BOVILL and seek input regarding the designation of said ultimate disposal site and shall in good faith consider such input.

IV. HOLIDAYS

The following shall be holidays for purpose of this Agreement:

New Year's Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Day

CITY may decide to observe any or all of the above listed holidays by suspension of disposal or recycling services on a holiday, but such decision in no manner relieves CITY of its obligation to provide such services on the next regularly scheduled service day.

V. COMPLAINTS

All complaints regarding CITY's performance of this Agreement shall be made through BOVILL to the Director of Solid Waste Services and shall be given prompt and courteous attention. Complaints made directly to CITY from producers in BOVILL shall be given prompt and courteous attention. CITY shall investigate and respond to such complaints and shall inform BOVILL in a timely manner of the nature of such complaints and any remedial action taken in response to such complaints.

VI. NOTIFICATION

BOVILL shall notify all producers to be served hereunder about complaint procedures, rates, fees, regulations, schedules, and changes in the operation of the disposal and or/recycling system by means of press releases and/or publication of pamphlets and/or other means as elected by BOVILL, and through at least one (1) annual mailing per year. The cost of such notification shall be the responsibility of BOVILL.

VII. POINT OF CONTACT

All notices between CITY and BOVILL shall be directed by CITY to the Mayor of BOVILL, P O Box 569, Bovill, Idaho, 83806, and by BOVILL to CITY via the Director of Solid Waste Services, at P O Box 9203, Moscow, Idaho, 83843.

VIII. SALVAGE RIGHTS

CITY shall have the full and exclusive right to all salvageable materials when such materials are accepted at the Designated Waste Processing Facility or Recycling Center pursuant to this Agreement, and CITY shall have the sole right to any and all funds received from the sale of said salvageable materials. Salvaging or scavenging by BOVILL, its Collection Franchisee(s), or any of its employees or agents after delivery to said Solid Waste Processing Facility or Recycling Center is prohibited.

IX. INSURANCE

- A. CITY shall at all times during the term of this Agreement, maintain, or cause its franchisees to maintain in full force and effect Employer's Liability, Workmen's Compensation, Public Liability and Property Damage insurance, including contractual liability coverage. Additionally, at all times during the term of this Agreement, BOVILL shall obtain and maintain, or cause its Collection Franchisee to obtain and maintain in full force and effect, public liability insurance and property damage insurance, including contractual liability coverage in the amounts of one million dollars (\$1,000,000.00) per occurrence, and two million dollars (\$2,000,000.00) aggregate. All insurance shall be provided before commencement of work hereunder. CITY and BOVILL shall annually furnish the other with certificates of insurance or other evidence satisfactory to the other that such insurance has been procured and is in force. Said certificates shall contain the following express provisions:

"This is to certify that the policies of insurance described herein have been issued to the insured for whom this certificate is executed and are in force at this time. In the event of cancellation or material change in a policy affecting the certificate holder, thirty (30) days prior written notice of said cancellation or change shall be provided to the certificate holder."

- B. For purposes of this Agreement, CITY shall carry, and/or shall cause its franchisee(s) or agents to carry, the following types of insurance in at least the limits specified below:

<u>COVERAGE</u>	<u>LIMITS OF LIABILITY</u>
Workmen's Compensation	Statutory
Employer's Liability	\$1,000,000
General Liability	\$1,000,000
except automobile (bodily injury and/or property damage)	each occurrence/ \$2,000,000 aggregate
Automobile bodily injury and/or property damage liability, combined single limit	\$1,000,000 each occurrence

All coverage subject to policy conditions

- C. As an alternative to the above, CITY may, with express written permission of BOVILL, provide the above public liability and property coverage under a plan of self-insurance. Each insurance policy with respect to public liability insurance may provide for self-insured retention of an amount of two hundred and fifty thousand dollars (\$250,000.00) with the result that CITY is its own insurer to that extent and with the requirement that CITY provides BOVILL with such evidence of financial responsibility as deemed necessary by BOVILL.

X. INTERRUPTION OF SERVICE

- A. Interruption of service shall mean that period of time during which services to be provided by CITY pursuant to this Agreement are interrupted, discontinued or substantially reduced, except as excused hereunder, for a period of five (5) consecutive days exclusive of Sundays and Holidays as defined herein; or after the expiration of five (5) days after notice, in accordance with the procedures required herein, is provided to CITY by BOVILL that BOVILL is terminating this Agreement because of a breach or default on the part of CITY and until such time as other arrangements can be made by BOVILL for other such services.
- B. BOVILL shall have the right to contract with another person, entity or corporation to provide the services set forth herein in the event of an interruption of service by CITY, for the duration of such interruption of service. In the event of interruption of service, all payments to CITY shall be suspended. During the period of such interruption of service, CITY shall be liable to BOVILL for the reasonable costs of providing such services less the amount of payment BOVILL would have been liable to make to CITY for providing such services. BOVILL shall document the actual reasonable costs of providing such services during such interruption of service. CITY shall not be liable for costs which are not supported by such documentation.

- C. In the event that such interruption of service continues for a period of thirty (30) consecutive days, after the expiration of the 30th day, either BOVILL or CITY may terminate this Agreement. Termination shall be effective not less than one hundred fifty (150) days after service of the notice of termination upon the non-terminating Party. In the event of such termination by CITY, the liability of CITY to BOVILL shall be limited to the reasonable increased costs (documented as provided herein) of providing such services during such interruption of service prior to such termination.

XI. BASIS AND METHOD OF PAYMENT

- A. Reimbursement. BOVILL shall pay CITY in accordance herewith the amounts set forth in Exhibit "A" for each service. BOVILL shall also reimburse CITY for any fuel surcharges incurred on behalf of BOVILL in accordance with the fuel adjustment agreement between CITY and Finley-Buttes Limited Partnership attached hereto as Exhibit "B". BOVILL's pro rata share of any fuel surcharge shall be calculated by dividing BOVILL's tonnage processed within the billing period by the total tonnage processed within the billing period. Should CITY receive a credit in accordance with fuel adjustment agreement, CITY shall calculate and provide BOVILL with credit in the same manner. The rates specified shall include all costs, fees and other expenses of CITY associated with the performance of its obligations hereunder, including those costs, if any, associated with (a) tipping fees at the Designated Waste Processing Facility; (b) transport to the Ultimate Disposal Site; (c) disposal fees at the Ultimate Disposal Site; and (d) program area costs as shown at Exhibit "A".
- B. Modification of Rates.
1. Annual Rate Adjustment. The rates for services provided under this agreement shall be escalated annually by one point five percent (1.5%) effective upon October 1 of each year of the initial term as shown in Exhibit "A". Rates beyond the initial five (5) year term shall be determined through future sanitation rate studies and shall be adjusted prior to the commencement of any future term extension.
 2. CITY's Request.
 - a. CITY shall have the right to petition BOVILL at any time for additional fee adjustments on the basis of unusual changes in the cost of operations i.e., revised federal and State of Idaho laws affecting this Agreement, which require mandatory compliance by the CITY resulting in increased operating costs to CITY, (as proven by full documentation of such increased operating costs as requested by BOVILL). All such requests shall be fully developed setting forth the changes requested, existing costs, summary of estimated change in costs and the amount of fee change requested. BOVILL shall respond to such requests within thirty (30) days. If the Parties are unable to reach agreement on a proposed rate adjustment, either Party may invoke the provisions of paragraph B(4), below.

- b. BOVILL understands that the cost of CITY's operations and services to be provided hereunder are subject to certain agreements (i.e., a Franchise Agreement and Hauling and Disposal Agreement). BOVILL has had the opportunity to review and analyze such agreements. CITY shall have the right to petition for a fee adjustment from BOVILL, and BOVILL shall be obligated to grant such fee adjustment, when such adjustment is made by CITY in response to a fee adjustment required by CITY's contractors pursuant to such agreements. All such requests shall be fully developed setting forth the changes requested, existing costs, summary of estimated change in costs and the amount of fee change requested. BOVILL shall respond to such requests within thirty (30) days. All fee adjustments made pursuant to this Section XI.B.2.b. shall be limited to BOVILL's pro-rata share of the actual fee adjustment(s) required of CITY.
3. BOVILL's Request. BOVILL may petition CITY for a change in either the level or nature of the service provided, and the resulting proposed fee adjustment. The notice shall include a listing by BOVILL of the type or nature of documentation, analysis or audit it is relying upon in support of the proposed change. Within sixty (60) days following receipt of such a request, unless some other time period is mutually agreed to by the Parties, CITY shall notify BOVILL as to whether it agrees with the modification of level and/or nature of service and/or the fee adjustment. Nothing herein shall be construed to require CITY to consent to such change in the nature and/or level of service. In the event CITY does not agree with BOVILL's fee adjustment, it shall also provide BOVILL with copies of all documentation, analysis or audit, on which CITY relies with CITY's written response. If CITY agrees with the fee adjustment, such adjustment will become effective upon BOVILL giving written notice to CITY to implement the change in the level and/or nature of service. In the event that BOVILL does not implement such changes in the nature and/or level of service (after CITY has agreed to such changes), BOVILL shall reimburse CITY for its costs, plus actual reasonable administrative charges not to exceed fifteen percent (15%) of such costs, incurred in responding to BOVILL's request for such adjustment. It is further acknowledged that this paragraph shall not operate so as to terminate the material provisions and intent of this Agreement; that is, CITY shall provide the solid waste disposal services set forth herein to BOVILL during the term of this Agreement while deciding on BOVILL's petition for change.
4. Arbitration of Disputes. In the event that the Parties cannot agree upon compensation for the work to be performed, the Parties agree that such a dispute shall be subject to binding arbitration pursuant to the rules of the Uniform Arbitration Act. The Parties shall mutually select a disinterested, non-local arbitrator. In the event the Parties are unable to mutually agree, each Party shall designate a disinterested, non-local individual and these two (2) designees shall then select the arbitrator. All designations of arbitrator or designee shall occur within ten (10) days of notice of dispute being delivered by one (1) Party to the other, and designees shall select the arbitrator within ten (10) days of their designation. The decision of the arbitrator shall be binding on both Parties. The non-prevailing Party, as determined by the arbitrator, shall pay all costs of the arbitration and the prevailing Party shall be awarded its reasonable costs

and reasonable attorney fees incurred in participating in such arbitration, said costs and attorney fees shall be limited to the amount of ten thousand dollars (\$10,000.00).

5. Effective Date. The fee adjustments contemplated in subparagraphs (2) and (3) above, shall become effective on the date(s) that the changes in service commence, or on the date such contractual rates change.
 6. Emergency Services. Should additional services be required in an emergency, above and beyond those contemplated in this Agreement, BOVILL may order reasonable delivery of services and BOVILL shall pay the verifiable costs of such services, plus actual reasonable administrative charges not to exceed fifteen percent (15%) of such costs.
- C. Payment. CITY shall be responsible for billing BOVILL monthly for the services set forth herein. BOVILL shall remit payment to CITY by the 20th day of each month following receipt of CITY's billing. In the event that BOVILL fails to remit payment to CITY by the 20th day of each month for such billing, BOVILL shall pay to CITY, in addition to the amount of the billing, a late fee in the amount of one percent (1%) of the amount of the billing per day beyond the due date. In addition to this late fee, in the event that BOVILL fails to remit payment to CITY within fourteen (14) days from the due date, CITY may, in its discretion, without penalty or determination that BOVILL is in breach of this Agreement, suspend its obligations and services to be provided hereunder until such charges are paid.

XII. TITLE TO WASTE

Title to all Acceptable Waste accepted at CITY's Designated Waste Processing Facility or Recycling Center, shall pass to CITY when so accepted. Title to Hazardous Wastes, potentially harmful wastes, Infectious Wastes or other Unacceptable Waste shall not vest with CITY, but shall remain in the Producer. BOVILL further agrees that it shall have the responsibility to identify the Producer of such wastes.

XIII. WAIVER

The failure of BOVILL or CITY to insist on strict performance of any of the terms and conditions hereof shall not be deemed a waiver of the rights or remedies that BOVILL or CITY may have regarding that specific instance, and shall not be deemed a waiver of any subsequent breach or default in any of the terms and conditions hereof. Making or receiving payments pursuant to this Agreement during the existence of a dispute shall not be deemed to and shall not constitute a waiver of any of the claims or defenses of the Party making such payment.

XIV. ADHERENCE TO LAWS

CITY and BOVILL shall at all times comply with and adhere to applicable laws governing the performance of the services described herein. Non-compliance with applicable statutes, rules and regulations by CITY or BOVILL shall act as a breach of this Agreement and shall subject the non-complying Party to liability therefore. CITY and BOVILL shall report violations of such laws as soon as practicable.

XV. RECORDS AND INSPECTION

A. Records

CITY shall maintain such records as may be specified herein or may be necessary to document the quantity of solid waste accepted and processed in the performance of this Agreement separately from that solid waste received by CITY pursuant to any other agreement with any governmental entity, business or person and to document the time and date of performance of services hereunder. Actual scale records shall be utilized in determining the quantity of solid waste collected and transported hereunder unless the Parties hereafter agree to use a system of estimation. Such actual scale weights shall be obtained utilizing the scales maintained at the Designated Waste Processing Facility. CITY shall make all documents relating to the performance of work hereunder, including scale records, available to BOVILL within fourteen (14) working days of receiving written notice detailing the documents requested. This time period may be extended where extenuating circumstances exist. Should BOVILL desire that records be maintained other than as provided above, BOVILL may petition CITY to cause such records to be maintained, and CITY, in its sole discretion, may cause such records to be maintained, provide that the cost of maintaining such records shall be borne by BOVILL. Further the Parties agree that CITY shall provide BOVILL, with each monthly billing, the following information as to the solid waste received and processed hereunder during the preceding month.

1. Tonnage of Acceptable Waste broken down into categories of:
 - a. Transport Waste;
 - b. Inert/Demolition/Compost Waste;
 - c. Recyclable materials received from BOVILL's collection franchisee.
2. The number of White Goods accepted at the Designated Waste Processing Facility, including the names and addresses of the Producers of such White Goods. Provided that any additional cost to CITY incurred in providing such information shall be borne by BOVILL.

B. Inspection

BOVILL reserves the right to conduct on-site inspections of CITY's operations (including, without limitation, the actual weighing of solid waste) without notice and at reasonable times and in a reasonable manner. The costs of such inspections, including any increase in CITY's cost of operations as a result of accommodating such inspections shall be borne by BOVILL.

CITY shall furnish BOVILL with all requested information relating to such work, provided the costs of providing such information shall be borne by BOVILL.

XVI. JURISDICTION AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho, and venue shall be in the District Court of Latah County.

XVII. BINDING ON SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors and permitted assigns.

XVIII. DELAYS IN CARRYING OUT WORK

CITY shall not be held responsible by reason of any delay in the performance of this Agreement when such delay is primarily caused by some act of God, provided that in the case of delay caused by an act of God, CITY shall give notice to BOVILL (in writing, at the earliest possible time) of the causes of such delay. Such a delay shall not be considered to be an interruption of service as designated in Section X of this Agreement. Provided, that if such delay due to an act of God continues for a period of twenty (20) consecutive days, either Party may terminate this Agreement without liability to the other Party. Such termination shall be effective upon written notice provided to the other Party.

XIX. HOLD HARMLESS/INDEMNIFICATION

- A. The Parties are governmental entities subject to statutory and constitutional restrictions concerning the acceptance of liability. The Parties liabilities are further governed by the Idaho Tort Claims Act. It is the intention of the Parties that each will be responsible for its own acts and omissions and those of its officers and employees acting within the course and scope of their employment.
- B. Further, the Parties understand that the Idaho Tort Claims Act, Idaho Code § 6-903(2)(ii), states that each Party's liability is secondary to the obligation of an insurer or indemnitor, or other vehicle not owned or leased by the Party.

XX. TERM

This Agreement shall be in effect for five (5) years commencing on October 1, 2023, and ending September 30, 2028. The Parties may agree to one (1) additional five (5) year term extension ending September 30, 2033 and one (1) additional two (2) year term extension ending September 30, 2035. If either Party intends not to extend the terms beyond fiscal year 2028 or 2033, the Party shall notify the other in writing of this intent one hundred eighty (180) days prior to the expiration of the existing term.

XXI. WASTE FLOW/FLOW CONTROL

BOVILL shall enact and maintain in force and effect and use best efforts to enforce applicable ordinances to require all Acceptable Waste, excluding Recyclable Materials, produced within BOVILL to be delivered to the Designated Waste Processing Facility.

XXII. RESOLUTION OF DISPUTES

Any dispute arising as to the terms of this Agreement, excepting the compensation to be paid to CITY, as referenced in Section XI, shall be dealt with in the following manner, unless otherwise specified:

- A. The Party seeking resolution of a dispute under this Agreement shall provide the other Party with written notice of the specific nature of the dispute and the section of this Agreement relied on for its position;
- B. The Party receiving the notice shall respond in writing within five (5) working days as to what action it will take to resolve the dispute;
- C. If a dispute continues to exist, the Parties shall meet within ten (10) working days from the date of the receipt of the written response in an attempt to resolve the dispute. BOVILL shall be represented by its Mayor (and any other representatives it desires to have present), and CITY shall be represented by its Mayor (and any other representatives it desires to have present), in an attempt to resolve the dispute.
- D. Such resolution of the dispute as the Parties are able to agree upon shall be put in writing and signed by the representatives of each Party and shall become a part of this Agreement.
- E. If a dispute is not resolved through the foregoing procedures, either Party may seek satisfaction through a complaint filed in the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah, which shall be the exclusive forum agreed to by the Parties. (In any matter before the court, the remedy of specific performance shall be the preferred remedy.) In any action filed pursuant to this Agreement, costs and reasonable attorney fees shall be awarded by the court to the prevailing Party.
- F. Any time limits for action under this Agreement may be increased or decreased by mutual agreement of the Parties, said agreements to be in writing.

XXIII. SEVERABILITY

If any provision of this Agreement shall be declared illegal, void or unenforceable, the remaining provisions herein shall not be affected and shall remain in full force and effect.

XXIV. ENTIRE AGREEMENT

This Agreement and its Exhibit(s) constitute(s) the entire agreement and understanding between the Parties and it shall not be considered modified, altered, changed or amended in any respect unless done in accordance with this Agreement, reduced to writing, and signed by the Parties hereto. Any finding by a court of competent jurisdiction that any part or provision of this Agreement is unconstitutional or invalid shall not invalidate any other provision hereof.

XXV. PRIOR AGREEMENTS

This Agreement supersedes any and all prior Agreements between the parties for solid waste disposal services.

CITY, by and through its Mayor, and BOVILL, by and through its Mayor, have duly executed this Agreement in duplicate originals, to be effective on the 1st day of October, 2023, notwithstanding the date executed by the Parties hereto.

CITY OF BOVILL, IDAHO:

CITY OF MOSCOW, IDAHO

Diane Holt, Mayor

Arthur D. Bettge, Mayor

ATTEST:

ATTEST:

Christine Jewell, Bovill City Clerk

Laurie M. Hopkins, Moscow City Clerk

EXHIBIT “A”

**SCHEDULE OF REIMBURSEMENT
October 1, 2023 through September 30, 2028**

The City of Bovill (BOVILL) agrees to pay the City of Moscow (CITY) the amounts shown herein for Solid Waste Disposal, pursuant to this Agreement, and such being delivered to the Solid Waste Processing Facility by BOVILL’s collection franchisee or other person, or entity authorized by BOVILL.

1. Municipal Solid Waste Disposal (per ton):

FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
\$99.27	\$100.76	\$102.27	\$103.80	\$105.36

2. Non-Municipal Solid Waste Disposal (per ton):

FY 2024	FY 2025	FY 2026	FY 2027	FY2028
\$40.50	\$41.11	\$41.73	\$42.36	\$43.00

3. Mixed Municipal/Non-Municipal Solid Waste Disposal (per ton):

FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
\$70.04	\$71.10	\$72.17	\$73.26	\$74.36

4. Compostable Materials: No Charge

5. Recyclable Materials: No Charge

6. Tire Disposal (per ton): \$225.00 **Tires with Rims (each):** Additional \$2.20

7. Program Cost Rates: \$1.30 per month per billed COUNTY Collection Unit

This rate shall pay for unlimited access by individual BOVILL residents to the CITY Recycling Facility, Household Hazardous Waste Facility, Solid Waste Education, and individual access to the Solid Waste Processing Facility; provided, however, that individual access to the Solid Waste Processing Facility shall be assessed a ten dollar (\$10) per load “minimum fee” and shall be billed directly to the resident.

Fiscal year 2024 fee modification shall be effective October 1, 2023. The fee modification date shall be October 1 of each year (example: Fiscal year 2024 fee modification shall be effective October 1, 2023).

EXHIBIT "B"

FIRST AMENDMENT TO AGREEMENT FOR SOLID WASTE TRANSPORTATION AND DISPOSAL BETWEEN CITY OF MOSCOW, IDAHO AND FINLEY-BUTTES LIMITED PARTNERSHIP

THIS FIRST AMENDMENT TO AGREEMENT FOR SOLID WASTE TRANSPORTATION AND DISPOSAL BETWEEN CITY OF MOSCOW, IDAHO AND FINLEY-BUTTES LIMITED PARTNERSHIP (hereinafter "First Amendment"), is made and entered into this 19th day of December, 2022, by and between City of Moscow, Idaho, a municipal corporation of the State of Idaho, 206 East Third Street, Moscow, Idaho, 83843 (hereinafter "CITY"), and Finley-Buttes Limited Partnership, an Oregon limited partnership, (hereinafter "CONTRACTOR").

WITNESSETH:

WHEREAS, CONTRACTOR was selected to own, otherwise provide, and operate Facilities to accept CITY Acceptable Waste in loaded Trailers at CITY's designated Solid Waste Processing Facility (hereinafter "SWPF") and to Transport to and Dispose of that Acceptable Waste at the Disposal Site for CITY through an executed Agreement approved by City Council on October 7, 2019, approved by CONTRACTOR's Board of Directors as evidenced by the Unanimous Written Consent of the General Partner of Finley-Buttes Limited Partnership dated October 16, 2019 and said Agreement was executed by the Parties on November 4, 2019, see Attachment "A" (hereinafter "Agreement"); and

WHEREAS, the Agreement provides for modification upon written agreement signed by the Parties (Article 2, Section 2.13); and

WHEREAS, the Agreement permits CITY, at CITY's sole discretion, to consider CONTRACTOR requests for reimbursements due to extraordinary fuel price increases (Article 8, Section 8.2 A.(4)); and

WHEREAS, the Agreement allows for adjustment of a Service Fee or any other payment or fee at any time by mutual consent of the Parties (Article 8, Section 8.4. E); and

WHEREAS, CONTRACTOR requested fuel relief due to the unanticipated significant increases in diesel fuel costs and the fact that a portion of CONTRACTOR's cost is predicated on fuel usage to transport CITY waste two hundred fourteen (214) miles one way; and

WHEREAS, CITY has determined that the requested fuel relief is reasonable and appropriate and has previously granted fuel relief to CONTRACTOR's predecessor when similar fuel cost volatility occurred; and

WHEREAS, the proposed fuel relief adjustment contained herein provides a fair and predictable method of accounting for fuel cost volatility and provides for both reimbursement of excessive fuel expenses to CONTRACTOR when fuel prices exceed 15% of the adjusted base fuel index, and credits to CITY when fuel prices drop 15% below the adjusted base fuel index as described herein; and

FIRST AMENDMENT TO SOLID WASTE TRANSPORTATION AND DISPOSAL AGREEMENT
FINLEY-BUTTES LIMITED PARTNERSHIP

2022-203 PAGE 1 OF 4

WHEREAS, the Parties intend to modify the Agreement through this First Amendment to accommodate CONTRACTOR'S requested fuel adjustment;

NOW, THEREFORE, it is agreed, for and in consideration of the mutual covenants and promises between the Parties hereto, as follows:

Section 1. All matters stated above are found to be true and correct and are incorporated herein by reference as if copied in their entirety and shall be adopted with the following sections of this First Amendment.

Section 2. It has been determined that a fair and predictable method of accounting for fuel cost volatility is warranted and is in the best interests of both Parties.

Section 3. CITY shall apply fuel cost adjustments as a payment to CONTRACTOR, or CONTRACTOR will apply the fuel cost adjustment as a credit to CITY, when the index changes as defined below.

1. The index to be used when considering fuel price adjustments pursuant to this First Amendment shall be the U.S. Energy Information Administration (EIA) https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=pet&s=emd_epd2d_pte_r5xca_dpg&f=m, Monthly West Coast (PADD 5) Except California No 2 Diesel Retail Prices (Dollars per Gallon).
2. The Current Fuel Index (CFI) shall be the current month's average price per gallon as reported by EIA as referenced herein. The monthly average CFI, shall be used to compute fuel adjustments for the same month that services are performed for CITY. (i.e. October CFI used to compute fuel adjustment for October services). Fuel adjustments will be calculated by the 15th of the month for the prior month's services, and any payments or credits will be applied to the subsequent month's bill (i.e. September's adjustment will be calculated on October 15th and any payments or credits will be applied to October's billing).
3. Fuel adjustments provided by this First Amendment shall be retroactively effective to January 1, 2022, and shall continue thereafter through the duration of the term of the Agreement.
4. Effective January 1, 2022, the initial base fuel index (BFI) shall be Three Dollars and Thirty-One Cents (\$3.31) per gallon. The BFI shall thereafter be adjusted annually on October 1st of each year beginning October 1, 2022 to establish the Adjusted Base Fuel Index (ABFI) by an amount equal to forty percent (40%) of the annual Consumer Price Index (CPI) as published in January of each year by the United States, Bureau of Labor Statistics (Index I.D. CUUR0000SA0, All Urban Consumers, U.S. All items, 1982-84 = 100) as described herein.

$$ABFI = BFI * (CPI \text{ annual adjustment} * 40\%)$$

Where:

BFI = Base Fuel Index

CPI Annual Adjustment = ((current year annual average CPI - prior year annual average CPI) / prior year annual average CPI)
ABFI = adjusted base fuel index

5. A fuel price adjustment will only be made when the CFI varies by more than fifteen percent (15%) from the ABFI. Payments and credits shall be computed as follows:

Contractor payment if CFI is greater than 115% of ABFI:
 $FPA = (CFI - (ABFI * 115\%)) * Q * T$

City credit if CFI is less than 85% of ABFI:
 $FPA = (CFI - (ABFI * 85\%)) * Q * T$

Where:
FPA = fuel price adjustment
Q = 92.44 gallons per trip
T = monthly trips

Section 4. All other terms and conditions of the Agreement that are not amended by this First Amendment shall remain in full force and effect.

Section 5. This First Amendment was adopted by the City Council of the City of Moscow, Idaho and Approved by the Mayor of the City of Moscow on a regularly scheduled meeting dated November 5, 2022.

IN WITNESS WHEREOF, said CONTRACTOR and CITY have caused this First Amendment to be executed on the day and year first above written.

CONTRACTOR

By: Brian Evola
Brian Evola
Finley-Buttes Limited Partnership



CITY

City of Moscow, Idaho

By: Arthur D. Bettge
Arthur D. Bettge, Mayor

ATTEST

Taylor Riedner
Taylor Riedner, Deputy City Clerk

Approved As To Form:
Mia Bautista
Mia Bautista, City Attorney

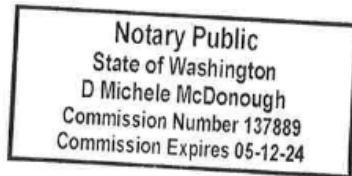
FIRST AMENDMENT TO SOLID WASTE TRANSPORTATION AND DISPOSAL AGREEMENT
FINLEY-BUTTES LIMITED PARTNERSHIP

PAGE 3 OF 4

ACKNOWLEDGMENT

STATE OF Washington
County of Clark) ss:

On this 12th day of December, 2022, before me, a Notary Public in and for said State, appeared Brian Evola, known to me to be the person named above and acknowledged that he executed the foregoing document as the duly authorized representative for Finley-Buttes Limited Partnership.



D. Michele McDonough
Notary Public for State of Washington
Residing at Clark County
My commission expires: 05-12-24

**SOLID WASTE DISPOSAL AGREEMENT
BETWEEN CITY OF JULIAETTA, IDAHO AND
CITY OF MOSCOW, IDAHO**

THIS SOLID WASTE DISPOSAL AGREEMENT BETWEEN CITY OF JULIAETTA, IDAHO AND CITY OF MOSCOW, IDAHO (hereinafter "Agreement"), made and entered into this ____ day of _____, 2023, by and between City of Juliaetta, Idaho, a municipal corporation of the State of Idaho, 203 Main Street, Juliaetta, Idaho, 83535 (hereinafter "JULIAETTA"), and the City of Moscow, Idaho, a municipal corporation of the State of Idaho, 206 East Third Street, Moscow, Idaho, 83843 (hereinafter "CITY").

W I T N E S S E T H:

WHEREAS, CITY manages and operates a solid waste and recycling processing and disposal system in Latah County; and

WHEREAS, CITY has offered to provide JULIAETTA with solid waste and recycling services and related programs in accordance with Federal, State of Idaho, and local statutes, laws, rules, regulations, and ordinances as defined herein; and

WHEREAS, JULIAETTA finds that CITY is qualified and capable to provide such services to JULIAETTA; and

WHEREAS, CITY and JULIAETTA have an existing solid waste disposal agreement that was executed on February 9, 2017, and which expires on September 30, 2023; and

WHEREAS, JULIAETTA wishes for CITY to continue to provide JULIAETTA with solid waste processing and disposal and recycling processing services; and

WHEREAS, in 2021, CITY conducted a Sanitation Rate Study to determine the cost of solid waste processing and disposal services and necessary annual adjustments; and

WHEREAS, in 2022, CITY amended its agreement with Finley-Buttes Limited Partnership (CITY's municipal solid waste (MSW) transport and disposal contractor) to provide fuel cost relief through a fuel adjustment formula as set forth in Exhibit "B" attached hereto and incorporated herein;

THEREFORE, CITY and JULIAETTA hereby enter into an Agreement for disposal and/or recycling of Acceptable Waste, Demolition/Inert Waste, Compostable Waste and recyclable materials received from residences, businesses, institutions and industries within JULIAETTA and for programs related thereto, and for and in consideration of the promises and covenants contained herein, CITY hereby agrees to and with JULIAETTA to undertake and execute, for an agreed upon consideration, the herein described work, in a good, substantial and workmanlike manner.

I. DEFINITIONS

For purposes of interpretation of the terms of this Agreement, the following terms, phrases and derivations shall have the following meanings. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The term "shall" is always mandatory and not merely directory.

- A. **ACCEPTABLE WASTE:** That portion of solid waste that is normally disposed of and originating from residential dwellings, businesses, industrial and commercial establishments which consists of household wastes from private residences, commercial waste which originates in wholesale, retail or service establishments such as restaurants, stores, markets, theaters, hotels and warehouses, and institutional waste material originating in schools, hospitals, research institutions and public buildings. Such Acceptable Waste shall include tires, metals and white goods. In no event shall Acceptable Waste include any Hazardous Waste, Infectious Waste or any Unacceptable Waste.
- B. **COLLECTION FRANCHISEE:** The person, persons, corporation or partnership holding a contract and/or franchise issued or granted by JULIAETTA authorizing such person, persons, corporation or partnership to operate, conduct or maintain a solid waste collection and disposal system upon or over any highways, streets, roads, alleys and public ways of JULIAETTA.
- C. **COLLECTION UNIT:** A JULIAETTA resident and/or business receiving solid waste collection services at a place of residence or place of business located within JULIAETTA.
 - 1. **Individual Unit:** A dwelling within JULIAETTA occupied by a person or group of persons. An individual unit shall be deemed occupied when either occupied or generating solid waste. Each unit within an apartment building, condominium, duplex or mobile home park shall be treated as an individual residential unit, unless served by a mechanical container or compactor.
 - 2. **Commercial Unit:** Each space within JULIAETTA occupied by an individual business. A business shall be deemed occupied when either occupied or generating solid waste.
- D. **COMPOSTABLE WASTE:** That Acceptable Waste that has been accepted at the Designated Waste Processing Facility for composting. Such Compostable Waste shall conform to all statutes, rules and regulations of any governmental regulatory agency which pertains to composting.
- E. **DEMOLITION/INERT WASTE:** That Acceptable Waste that has been accepted at the Designated Waste Processing Facility for placement in the demolition/inert landfill. Such Demolition/Inert Waste shall conform to all statutes, rules and regulations of any governmental regulatory agency which pertains to demolition/inert landfiling.

- F. DESIGNATED WASTE PROCESSING FACILITY: The facility or site designated by CITY where Acceptable Waste is compacted, incinerated, landfilled, composted, transferred or otherwise disposed of or treated prior to disposal.
- G. DIRECTOR OF SOLID WASTE SERVICES: The Moscow CITY Supervisor or such other person or persons so designated by the Moscow CITY Supervisor.
- H. HAZARDOUS WASTE: Any chemical, compound, mixture, substance or article which is designated by federal law or regulation, Idaho law or regulation or regulation of any other state when applicable (such as in the case of solid waste exported to or through another state for ultimate disposal) to be 'hazardous', 'dangerous', or 'extremely dangerous'. Hazardous Waste includes any material by reason of its composition or characteristics, is:
1. Toxic or hazardous waste as defined in either the Solid Waste Disposal Act, 42 U.S.C. Section 6901 *et seq*, as replaced, amended, expanded or supplemented, or any laws of similar purpose or effect, and such policies or regulations thereunder, or under relevant state law as replaced, amended, expanded or supplemented, or any laws of similar purpose or effect, and any rules, regulations or policies thereunder, or
 2. Special nuclear or by-products material within the meaning of the Atomic Energy Act of 1954, 42 U.S.C. Section 2011 *et seq*, as replaced, amended, expanded or supplemented, or any laws of similar purpose or effect, and such policies or regulations thereunder, or under relevant state law as replaced, amended, expanded or supplemented, or any laws of similar purpose or effect, and any rules, regulations or policies thereunder; or
 3. Other material which any governmental agency or unit having appropriate jurisdiction shall determine from time to time is harmful, toxic or dangerous or otherwise ineligible for transfer through, transportation by, or disposal from the site; or
 4. Any material which would result in residue being designated as hazardous waste under the above; or
 5. Any waste falling within the definition contained in Idaho Code § 39-4403 (8).
- I. HOUSEHOLD SOLID WASTE: That Acceptable Waste, including garbage or trash produced by ordinary residential units, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas, which fits into a bag, manual container or bundle less than four feet (4') in length. Does not include bulky, Infectious Waste, Hazardous Waste, Unacceptable Waste or any type of solid waste that is not normally collected by JULIAETTA's collection Franchisee at individual or commercial units.
- J. INFECTIOUS WASTE: Any material, chemical, compound, mixture, substance or article known to be infectious by the generator or producer or which is designated by the United States Environmental Protection Agency or other appropriate agency of the Federal

Government or the State of Idaho to be "infectious" as that term is commonly defined by or pursuant to law.

- K. **PRODUCER:** Any person, business or other entity which produces solid waste within JULIAETTA.
- L. **PUTRESCIBLE WASTE:** Solid waste which has the capacity to become rotten or foul.
- M. **RATE MODIFICATION DATE:** The date whereby all rate adjustments shall become effective. The rate modification date shall be October 1 of each year this Agreement is in force.
- N. **RESOURCE RECOVERY:** The process, including recycling, of obtaining useful material or energy resources from solid waste.
- O. **TRANSFER STATION:** The transfer, processing and transportation facility which has been designated by CITY for the purpose of transferring, processing and/or transporting Transport Waste.
- P. **TRANSPORT WASTE:** That Acceptable Waste which has been accepted at the Designated Waste Processing Facility for loading into transport vehicles for transport to an Ultimate Disposal Site. Such Transport Waste shall conform to the rules of, and be acceptable to, the Ultimate Disposal Site.
- Q. **ULTIMATE DISPOSAL SITE:** Any disposal site chosen by CITY which may ultimately receive Transport Waste from the Designated Waste Processing Facility.
- R. **UNACCEPTABLE WASTE:** That portion of the solid waste such as, but not limited to, explosives, pathological and biological waste, Infectious Waste, Hazardous Waste (except as deemed subject to the Household Hazardous Waste Program as defined in this Agreement), radioactive materials, foundry sand, cesspool waste, human remains, industrial process wastes, motor vehicles (including major motor vehicle parts such as transmissions, rear ends, springs and fenders), agricultural and farm machinery and equipment, marine vessels and major parts thereof or any other large type of machinery or equipment, or that which in the reasonable judgment of the Director may present a substantial endangerment to health or safety, or has a reasonable possibility of adversely affecting the operation of the Designated Waste Processing Facility or the acceptance of Transport Waste by the Ultimate Disposal Site.
- S. **WHITE GOODS.** Appliances such as refrigerators, ranges, water heaters, freezers, unit air conditioners, washing machines, dishwashers, clothes dryers, and other similar domestic and commercial large appliances.

II. SCOPE OF WORK

- A. SERVICE: CITY shall furnish, manage and maintain a system of processing, transportation, and disposal and/or recycling of Acceptable Waste as described herein. CITY shall further provide access to CITY's Designated Waste Processing Facility, Recycling Center, Household Hazardous Waste Program and Solid Waste Education Program to the residents of JULIAETTA as provided herein. These services shall include all supervision, materials, equipment, labor and all other items necessary to satisfy the terms of this Agreement.
- B. ACCEPTANCE OF ACCEPTABLE WASTE: CITY shall accept all Acceptable Waste delivered to its Designated Waste Processing Facility by JULIAETTA's Collection Franchisee and/or by individual residents of JULIAETTA, provided all tipping fees associated with such acceptance are paid. CITY shall provide for the processing of said Acceptable Waste, including landfilling, composting, recycling and/or hauling of said Acceptable Waste (Transport Waste) to the Ultimate Disposal Site.
- C. ACCEPTANCE OF RECYCLABLE MATERIALS: CITY shall accept, process and provide for ultimate disposal of certain recyclable materials delivered to the CITY's Recycling Center by JULIAETTA's Collection Franchisee or the individual residents of JULIAETTA, provided all tipping fees associated with such acceptance are paid. The types of materials to be accepted at CITY Recycling Center, the amount of money to be paid, if any, for recyclable materials and the types of recyclable materials upon which such money will be paid shall be the sole decision of CITY. Provided, that JULIAETTA's Collection Franchisee, other persons authorized by JULIAETTA to operate a recycling collection business, or any other person operating a recycling collection business shall not be paid for recyclable materials collected and/or delivered to CITY's Recycling Center. Provided further, that JULIAETTA and/or residents of JULIAETTA may arrange for the processing of such recyclable materials through any other public or private entity.
- D. HOUSEHOLD HAZARDOUS WASTE PROGRAM: CITY shall provide access to CITY's Household Hazardous Waste Collection Facility to all residents of JULIAETTA. The types of materials to be accepted pursuant to such Household Hazardous Waste Collection program and the operation of such program shall be the sole decision of CITY, upon consultation with JULIAETTA.
- E. SOLID WASTE EDUCATION PROGRAM: CITY shall include JULIAETTA in any and all solid waste education programs established by CITY.
- F. INFECTIOUS WASTE AND POTENTIALLY HARMFUL WASTES:
 - 1. CITY may provide, but is not obligated to provide, disposal programs for Infectious Waste or potentially harmful wastes. In the event that CITY elects to provide such program(s), CITY shall handle such Infectious Waste and potentially harmful wastes in a manner consistent with all applicable regulations.
 - 2. Producers of such wastes shall arrange with CITY, at Producers own expense, for the disposal of such wastes and the charges therefor, and the costs of disposing of such wastes shall be set by CITY.

- G. **UNACCEPTABLE WASTE:** JULIAETTA shall not permit its Collection Franchisee or any other person to place Unacceptable Waste into a collection vehicle or container. JULIAETTA shall implement a program of training and procedure which is designed to prevent the placing of Unacceptable Waste into collection vehicles or containers. In the event that JULIAETTA's Collection Franchisee or any other person delivers unacceptable waste to the Designated Waste Processing Facility, CITY shall, at CITY's sole option, either:
1. Dispose of such Unacceptable Waste in a legally proper manner, and shall charge JULIAETTA for all costs thereof, plus actual reasonable administrative charges not to exceed fifteen percent (15%) of such costs; or
 2. Reject such Unacceptable Waste.

III. DESIGNATION OF ULTIMATE DISPOSAL SITE(S)

The Parties understand and agree that CITY shall have the sole and exclusive right to designate the location or locations to which solid waste will be transported for processing and ultimate disposal. Provided that CITY shall consult with JULIAETTA and seek input regarding the designation of said ultimate disposal site and shall in good faith consider such input.

IV. HOLIDAYS

The following shall be holidays for purpose of this Agreement:

New Year's Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Day

CITY may decide to observe any or all of the above listed holidays by suspension of disposal or recycling services on a holiday, but such decision in no manner relieves CITY of its obligation to provide such services on the next regularly scheduled service day.

V. COMPLAINTS

All complaints regarding CITY's performance of this Agreement shall be made through JULIAETTA to the Director of Solid Waste Services and shall be given prompt and courteous attention. Complaints made directly to CITY from producers in JULIAETTA shall be given prompt and courteous attention. CITY shall investigate and respond to such complaints and shall inform JULIAETTA in a timely manner of the nature of such complaints and any remedial action taken in response to such complaints.

VI. NOTIFICATION

JULIAETTA shall notify all producers to be served hereunder about complaint procedures, rates, fees, regulations, schedules, and changes in the operation of the disposal and or/recycling system by means of press releases and/or publication of pamphlets and/or other means as elected by JULIAETTA, and through at least one (1) annual mailing per year. The cost of such notification shall be the responsibility of JULIAETTA.

VII. POINT OF CONTACT

All notices between CITY and JULIAETTA shall be directed by CITY to the Mayor of JULIAETTA, P O Box 229, Juliaetta, Idaho, 83535, and by JULIAETTA to CITY via the Director of Solid Waste Services, at P O Box 9203, Moscow, Idaho, 83843.

VIII. SALVAGE RIGHTS

CITY shall have the full and exclusive right to all salvageable materials when such materials are accepted at the Designated Waste Processing Facility or Recycling Center pursuant to this Agreement, and CITY shall have the sole right to any and all funds received from the sale of said salvageable materials. Salvaging or scavenging by JULIAETTA, its Collection Franchisee(s), or any of its employees or agents after delivery to said Solid Waste Processing Facility or Recycling Center is prohibited.

IX. INSURANCE

- A. CITY shall at all times during the term of this Agreement, maintain, or cause its franchisees to maintain in full force and effect Employer's Liability, Workmen's Compensation, Public Liability and Property Damage insurance, including contractual liability coverage. Additionally, at all times during the term of this Agreement, JULIAETTA shall obtain and maintain, or cause its Collection Franchisee to obtain and maintain in full force and effect, public liability insurance and property damage insurance, including contractual liability coverage in the amounts of one million dollars (\$1,000,000.00) per occurrence, and two million dollars (\$2,000,000.00) aggregate. All insurance shall be provided before commencement of work hereunder. CITY and JULIAETTA shall annually furnish the other with certificates of insurance or other evidence satisfactory to the other that such insurance has been procured and is in force. Said certificates shall contain the following express provisions:

"This is to certify that the policies of insurance described herein have been issued to the insured for whom this certificate is executed and are in force at this time. In the event of cancellation or material change in a policy affecting the certificate holder, thirty (30) days prior written notice of said cancellation or change shall be provided to the certificate holder."

- B. For purposes of this Agreement, CITY shall carry, and/or shall cause its franchisee(s) or agents to carry, the following types of insurance in at least the limits specified below:

<u>COVERAGE</u>	<u>LIMITS OF LIABILITY</u>
Workmen's Compensation	Statutory
Employer's Liability	\$1,000,000
General Liability	\$1,000,000
except automobile (bodily injury and/or property damage)	each occurrence/ \$2,000,000 aggregate
Automobile bodily injury and/or property damage liability, combined single limit	\$1,000,000 each occurrence

All coverage subject to policy conditions

- C. As an alternative to the above, CITY may, with express written permission of JULIAETTA, provide the above public liability and property coverage under a plan of self-insurance. Each insurance policy with respect to public liability insurance may provide for self-insured retention of an amount of two hundred and fifty thousand dollars (\$250,000.00) with the result that CITY is its own insurer to that extent and with the requirement that CITY provides JULIAETTA with such evidence of financial responsibility as deemed necessary by JULIAETTA.

X. INTERRUPTION OF SERVICE

- A. Interruption of service shall mean that period of time during which services to be provided by CITY pursuant to this Agreement are interrupted, discontinued or substantially reduced, except as excused hereunder, for a period of five (5) consecutive days exclusive of Sundays and Holidays as defined herein; or after the expiration of five (5) days after notice, in accordance with the procedures required herein, is provided to CITY by JULIAETTA that JULIAETTA is terminating this Agreement because of a breach or default on the part of CITY and until such time as other arrangements can be made by JULIAETTA for other such services.
- B. JULIAETTA shall have the right to contract with another person, entity or corporation to provide the services set forth herein in the event of an interruption of service by CITY, for the duration of such interruption of service. In the event of interruption of service, all payments to CITY shall be suspended. During the period of such interruption of service, CITY shall be liable to JULIAETTA for the reasonable costs of providing such services less the amount of payment JULIAETTA would have been liable to make to CITY for providing such services. JULIAETTA shall document the actual reasonable costs of providing such services during such interruption of service. CITY shall not be liable for costs which are not supported by such documentation.

- C. In the event that such interruption of service continues for a period of thirty (30) consecutive days, after the expiration of the 30th day, either JULIAETTA or CITY may terminate this Agreement. Termination shall be effective not less than one hundred fifty (150) days after service of the notice of termination upon the non-terminating Party. In the event of such termination by CITY, the liability of CITY to JULIAETTA shall be limited to the reasonable increased costs (documented as provided herein) of providing such services during such interruption of service prior to such termination.

XI. BASIS AND METHOD OF PAYMENT

- A. Reimbursement. JULIAETTA shall pay CITY in accordance herewith the amounts set forth in Exhibit "A" for each service. JULIAETTA shall also reimburse CITY for any fuel surcharges incurred on behalf of JULIAETTA in accordance with the fuel adjustment agreement between CITY and Finley-Buttes Limited Partnership attached hereto as Exhibit "B". JULIAETTA's pro rata share of any fuel surcharge shall be calculated by dividing JULIAETTA's tonnage processed within the billing period by the total tonnage processed within the billing period. Should CITY receive a credit in accordance with fuel adjustment agreement, CITY shall calculate and provide JULIAETTA with credit in the same manner. The rates specified shall include all costs, fees and other expenses of CITY associated with the performance of its obligations hereunder, including those costs, if any, associated with (a) tipping fees at the Designated Waste Processing Facility; (b) transport to the Ultimate Disposal Site; (c) disposal fees at the Ultimate Disposal Site; and (d) program area costs as shown at Exhibit "A".
- B. Modification of Rates.
1. Annual Rate Adjustment. The rates for services provided under this agreement shall be escalated annually by one point five percent (1.5%) effective upon October 1 of each year of the initial term as shown in Exhibit "A". Rates beyond the initial five (5) year term shall be determined through future sanitation rate studies and shall be adjusted prior to the commencement of any future term extension.
 2. CITY's Request.
 - a. CITY shall have the right to petition JULIAETTA at any time for additional fee adjustments on the basis of unusual changes in the cost of operations i.e., revised federal and State of Idaho laws affecting this Agreement, which require mandatory compliance by the CITY resulting in increased operating costs to CITY, (as proven by full documentation of such increased operating costs as requested by JULIAETTA). All such requests shall be fully developed setting forth the changes requested, existing costs, summary of estimated change in costs and the amount of fee change requested. JULIAETTA shall respond to such requests within thirty (30) days. If the Parties are unable to reach agreement on a

proposed rate adjustment, either Party may invoke the provisions of paragraph B(4), below.

- b. JULIAETTA understands that the cost of CITY's operations and services to be provided hereunder are subject to certain agreements (i.e., a Franchise Agreement and Hauling and Disposal Agreement). JULIAETTA has had the opportunity to review and analyze such agreements. CITY shall have the right to petition for a fee adjustment from JULIAETTA, and JULIAETTA shall be obligated to grant such fee adjustment, when such adjustment is made by CITY in response to a fee adjustment required by CITY's contractors pursuant to such agreements. All such requests shall be fully developed setting forth the changes requested, existing costs, summary of estimated change in costs and the amount of fee change requested. JULIAETTA shall respond to such requests within thirty (30) days. All fee adjustments made pursuant to this Section XI.B.2.b. shall be limited to JULIAETTA's pro-rata share of the actual fee adjustment(s) required of CITY.
3. JULIAETTA's Request. JULIAETTA may petition CITY for a change in either the level or nature of the service provided, and the resulting proposed fee adjustment. The notice shall include a listing by JULIAETTA of the type or nature of documentation, analysis or audit it is relying upon in support of the proposed change. Within sixty (60) days following receipt of such a request, unless some other time period is mutually agreed to by the Parties, CITY shall notify JULIAETTA as to whether it agrees with the modification of level and/or nature of service and/or the fee adjustment. Nothing herein shall be construed to require CITY to consent to such change in the nature and/or level of service. In the event CITY does not agree with JULIAETTA's fee adjustment, it shall also provide JULIAETTA with copies of all documentation, analysis or audit, on which CITY relies with CITY's written response. If CITY agrees with the fee adjustment, such adjustment will become effective upon JULIAETTA giving written notice to CITY to implement the change in the level and/or nature of service. In the event that JULIAETTA does not implement such changes in the nature and/or level of service (after CITY has agreed to such changes), JULIAETTA shall reimburse CITY for its costs, plus actual reasonable administrative charges not to exceed fifteen percent (15%) of such costs, incurred in responding to JULIAETTA's request for such adjustment. It is further acknowledged that this paragraph shall not operate so as to terminate the material provisions and intent of this Agreement; that is, CITY shall provide the solid waste disposal services set forth herein to JULIAETTA during the term of this Agreement while deciding on JULIAETTA's petition for change.
4. Arbitration of Disputes. In the event that the Parties cannot agree upon compensation for the work to be performed, the Parties agree that such a dispute shall be subject to binding arbitration pursuant to the rules of the Uniform Arbitration Act. The Parties shall mutually select a disinterested, non-local arbitrator. In the event the Parties are unable to mutually agree, each Party shall designate a disinterested, non-local individual and these two (2) designees shall then select the arbitrator. All designations of arbitrator or designee shall occur within ten (10) days of notice of dispute being delivered by one (1) Party to the other, and designees shall select the arbitrator within

ten (10) days of their designation. The decision of the arbitrator shall be binding on both Parties. The non-prevailing Party, as determined by the arbitrator, shall pay all costs of the arbitration and the prevailing Party shall be awarded its reasonable costs and reasonable attorney fees incurred in participating in such arbitration, said costs and attorney fees shall be limited to the amount of ten thousand dollars (\$10,000.00).

5. Effective Date. The fee adjustments contemplated in subparagraphs (2) and (3) above, shall become effective on the date(s) that the changes in service commence, or on the date such contractual rates change.
 6. Emergency Services. Should additional services be required in an emergency, above and beyond those contemplated in this Agreement, JULIAETTA may order reasonable delivery of services and JULIAETTA shall pay the verifiable costs of such services, plus actual reasonable administrative charges not to exceed fifteen percent (15%) of such costs.
- C. Payment. CITY shall be responsible for billing JULIAETTA monthly for the services set forth herein. JULIAETTA shall remit payment to CITY by the 20th day of each month following receipt of CITY's billing. In the event that JULIAETTA fails to remit payment to CITY by the 20th day of each month for such billing, JULIAETTA shall pay to CITY, in addition to the amount of the billing, a late fee in the amount of one percent (1%) of the amount of the billing per day beyond the due date. In addition to this late fee, in the event that JULIAETTA fails to remit payment to CITY within fourteen (14) days from the due date, CITY may, in its discretion, without penalty or determination that JULIAETTA is in breach of this Agreement, suspend its obligations and services to be provided hereunder until such charges are paid.

XII. TITLE TO WASTE

Title to all Acceptable Waste accepted at CITY's Designated Waste Processing Facility or Recycling Center, shall pass to CITY when so accepted. Title to Hazardous Wastes, potentially harmful wastes, Infectious Wastes or other Unacceptable Waste shall not vest with CITY, but shall remain in the Producer. JULIAETTA further agrees that it shall have the responsibility to identify the Producer of such wastes.

XIII. WAIVER

The failure of JULIAETTA or CITY to insist on strict performance of any of the terms and conditions hereof shall not be deemed a waiver of the rights or remedies that JULIAETTA or CITY may have regarding that specific instance, and shall not be deemed a waiver of any subsequent breach or default in any of the terms and conditions hereof. Making or receiving payments pursuant to this Agreement during the existence of a dispute shall not be deemed to and shall not constitute a waiver of any of the claims or defenses of the Party making such payment.

XIV. ADHERENCE TO LAWS

CITY and JULIAETTA shall at all times comply with and adhere to applicable laws governing the performance of the services described herein. Non-compliance with applicable statutes, rules and regulations by CITY or JULIAETTA shall act as a breach of this Agreement and shall subject the non-complying Party to liability therefore. CITY and JULIAETTA shall report violations of such laws as soon as practicable.

XV. RECORDS AND INSPECTION

A. Records

CITY shall maintain such records as may be specified herein or may be necessary to document the quantity of solid waste accepted and processed in the performance of this Agreement separately from that solid waste received by CITY pursuant to any other agreement with any governmental entity, business or person and to document the time and date of performance of services hereunder. Actual scale records shall be utilized in determining the quantity of solid waste collected and transported hereunder unless the Parties hereafter agree to use a system of estimation. Such actual scale weights shall be obtained utilizing the scales maintained at the Designated Waste Processing Facility. CITY shall make all documents relating to the performance of work hereunder, including scale records, available to JULIAETTA within fourteen (14) working days of receiving written notice detailing the documents requested. This time period may be extended where extenuating circumstances exist. Should JULIAETTA desire that records be maintained other than as provided above, JULIAETTA may petition CITY to cause such records to be maintained, and CITY, in its sole discretion, may cause such records to be maintained, provide that the cost of maintaining such records shall be borne by JULIAETTA. Further the Parties agree that CITY shall provide JULIAETTA, with each monthly billing, the following information as to the solid waste received and processed hereunder during the preceding month.

1. Tonnage of Acceptable Waste broken down into categories of:
 - a. Transport Waste;
 - b. Inert/Demolition/Compost Waste;
 - c. Recyclable materials received from JULIAETTA's collection franchisee.
2. The number of White Goods accepted at the Designated Waste Processing Facility, including the names and addresses of the Producers of such White Goods. Provided that any additional cost to CITY incurred in providing such information shall be borne by JULIAETTA.

B. Inspection

JULIAETTA reserves the right to conduct on-site inspections of CITY's operations (including, without limitation, the actual weighing of solid waste) without notice and at

reasonable times and in a reasonable manner. The costs of such inspections, including any increase in CITY's cost of operations as a result of accommodating such inspections shall be borne by JULIAETTA. CITY shall furnish JULIAETTA with all requested information relating to such work, provided the costs of providing such information shall be borne by JULIAETTA.

XVI. JURISDICTION AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho, and venue shall be in the District Court of Latah County.

XVII. BINDING ON SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors and permitted assigns.

XVIII. DELAYS IN CARRYING OUT WORK

CITY shall not be held responsible by reason of any delay in the performance of this Agreement when such delay is primarily caused by some act of God, provided that in the case of delay caused by an act of God, CITY shall give notice to JULIAETTA (in writing, at the earliest possible time) of the causes of such delay. Such a delay shall not be considered to be an interruption of service as designated in Section X of this Agreement. Provided, that if such delay due to an act of God continues for a period of twenty (20) consecutive days, either Party may terminate this Agreement without liability to the other Party. Such termination shall be effective upon written notice provided to the other Party.

XIX. HOLD HARMLESS/INDEMNIFICATION

- A. The Parties are governmental entities subject to statutory and constitutional restrictions concerning the acceptance of liability. The Parties liabilities are further governed by the Idaho Tort Claims Act. It is the intention of the Parties that each will be responsible for its own acts and omissions and those of its officers and employees acting within the course and scope of their employment.
- B. Further, the Parties understand that the Idaho Tort Claims Act, Idaho Code § 6-903(2)(ii), states that each Party's liability is secondary to the obligation of an insurer or indemnitor, or other vehicle not owned or leased by the Party.

XX. TERM

This Agreement shall be in effect for five (5) years commencing on October 1, 2023, and ending September 30, 2028. The Parties may agree to one (1) additional five (5) year term extension ending

September 30, 2033 and one (1) additional two (2) year term extension ending September 30, 2035. If either Party intends not to extend the terms beyond fiscal year 2028 or 2033, the Party shall notify the other in writing of this intent one hundred eighty (180) days prior to the expiration of the existing term.

XXI. WASTE FLOW/FLOW CONTROL

JULIAETTA shall enact and maintain in force and effect and use best efforts to enforce applicable ordinances to require all Acceptable Waste, excluding Recyclable Materials, produced within JULIAETTA to be delivered to the Designated Waste Processing Facility.

XXII. RESOLUTION OF DISPUTES

Any dispute arising as to the terms of this Agreement, excepting the compensation to be paid to CITY, as referenced in Section XI, shall be dealt with in the following manner, unless otherwise specified:

- A. The Party seeking resolution of a dispute under this Agreement shall provide the other Party with written notice of the specific nature of the dispute and the section of this Agreement relied on for its position;
- B. The Party receiving the notice shall respond in writing within five (5) working days as to what action it will take to resolve the dispute;
- C. If a dispute continues to exist, the Parties shall meet within ten (10) working days from the date of the receipt of the written response in an attempt to resolve the dispute. JULIAETTA shall be represented by its Mayor (and any other representatives it desires to have present), and CITY shall be represented by its Mayor (and any other representatives it desires to have present), in an attempt to resolve the dispute.
- D. Such resolution of the dispute as the Parties are able to agree upon shall be put in writing and signed by the representatives of each Party and shall become a part of this Agreement.
- E. If a dispute is not resolved through the foregoing procedures, either Party may seek satisfaction through a complaint filed in the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah, which shall be the exclusive forum agreed to by the Parties. (In any matter before the court, the remedy of specific performance shall be the preferred remedy.) In any action filed pursuant to this Agreement, costs and reasonable attorney fees shall be awarded by the court to the prevailing Party.
- F. Any time limits for action under this Agreement may be increased or decreased by mutual agreement of the Parties, said agreements to be in writing.

XXIII. SEVERABILITY

If any provision of this Agreement shall be declared illegal, void or unenforceable, the remaining provisions herein shall not be affected and shall remain in full force and effect.

XXIV. ENTIRE AGREEMENT

This Agreement and its Exhibit(s) constitute(s) the entire agreement and understanding between the Parties and it shall not be considered modified, altered, changed or amended in any respect unless done in accordance with this Agreement, reduced to writing, and signed by the Parties hereto. Any finding by a court of competent jurisdiction that any part or provision of this Agreement is unconstitutional or invalid shall not invalidate any other provision hereof.

XXV. PRIOR AGREEMENTS

This Agreement supersedes any and all prior Agreements between the parties for solid waste disposal services.

CITY, by and through its Mayor, and JULIAETTA, by and through its Mayor, have duly executed this Agreement in duplicate originals, to be effective on the 1st day of October, 2023, notwithstanding the date executed by the Parties hereto.

CITY OF JULIAETTA, IDAHO:

CITY OF MOSCOW, IDAHO

Richard Groseclose, Mayor

Arthur D. Bettge, Mayor

ATTEST:

ATTEST:

Wendy Sandino, Juliaetta City Clerk

Laurie M. Hopkins, Moscow City Clerk

EXHIBIT “A”

**SCHEDULE OF REIMBURSEMENT
October 1, 2023 through September 30, 2028**

The City of Juliaetta (JULIAETTA) agrees to pay the City of Moscow (CITY) the amounts shown herein for Solid Waste Disposal, pursuant to this Agreement, and such being delivered to the Solid Waste Processing Facility by JULIAETTA’s collection franchisee or other person, or entity authorized by JULIAETTA.

1. Municipal Solid Waste Disposal (per ton):

FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
\$99.27	\$100.76	\$102.27	\$103.80	\$105.36

2. Non-Municipal Solid Waste Disposal (per ton):

FY 2024	FY 2025	FY 2026	FY 2027	FY2028
\$40.50	\$41.11	\$41.73	\$42.36	\$43.00

3. Mixed Municipal/Non-Municipal Solid Waste Disposal (per ton):

FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
\$70.04	\$71.10	\$72.17	\$73.26	\$74.36

4. Compostable Materials: No Charge

5. Recyclable Materials: No Charge

6. Tire Disposal (per ton): \$225.00 **Tires with Rims (each):** Additional \$2.20

7. Program Cost Rates: \$1.30 per month per billed COUNTY Collection Unit

This rate shall pay for unlimited access by individual JULIAETTA residents to the CITY Recycling Facility, Household Hazardous Waste Facility, Solid Waste Education, and individual access to the Solid Waste Processing Facility; provided, however, that individual access to the Solid Waste Processing Facility shall be assessed a ten dollar (\$10) per load “minimum fee” and shall be billed directly to the resident.

Fiscal year 2024 fee modification shall be effective October 1, 2023. The fee modification date shall be October 1 of each year (example: Fiscal year 2024 fee modification shall be effective October 1, 2023).

EXHIBIT "B"

FIRST AMENDMENT TO AGREEMENT FOR SOLID WASTE TRANSPORTATION AND DISPOSAL BETWEEN CITY OF MOSCOW, IDAHO AND FINLEY-BUTTES LIMITED PARTNERSHIP

THIS FIRST AMENDMENT TO AGREEMENT FOR SOLID WASTE TRANSPORTATION AND DISPOSAL BETWEEN CITY OF MOSCOW, IDAHO AND FINLEY-BUTTES LIMITED PARTNERSHIP (hereinafter "First Amendment"), is made and entered into this 19th day of December, 2022, by and between City of Moscow, Idaho, a municipal corporation of the State of Idaho, 206 East Third Street, Moscow, Idaho, 83843 (hereinafter "CITY"), and Finley-Buttes Limited Partnership, an Oregon limited partnership, (hereinafter "CONTRACTOR").

WITNESSETH:

WHEREAS, CONTRACTOR was selected to own, otherwise provide, and operate Facilities to accept CITY Acceptable Waste in loaded Trailers at CITY's designated Solid Waste Processing Facility (hereinafter "SWPF") and to Transport to and Dispose of that Acceptable Waste at the Disposal Site for CITY through an executed Agreement approved by City Council on October 7, 2019, approved by CONTRACTOR's Board of Directors as evidenced by the Unanimous Written Consent of the General Partner of Finley-Buttes Limited Partnership dated October 16, 2019 and said Agreement was executed by the Parties on November 4, 2019, see Attachment "A" (hereinafter "Agreement"); and

WHEREAS, the Agreement provides for modification upon written agreement signed by the Parties (Article 2, Section 2.13); and

WHEREAS, the Agreement permits CITY, at CITY's sole discretion, to consider CONTRACTOR requests for reimbursements due to extraordinary fuel price increases (Article 8, Section 8.2 A.(4)); and

WHEREAS, the Agreement allows for adjustment of a Service Fee or any other payment or fee at any time by mutual consent of the Parties (Article 8, Section 8.4. E); and

WHEREAS, CONTRACTOR requested fuel relief due to the unanticipated significant increases in diesel fuel costs and the fact that a portion of CONTRACTOR's cost is predicated on fuel usage to transport CITY waste two hundred fourteen (214) miles one way; and

WHEREAS, CITY has determined that the requested fuel relief is reasonable and appropriate and has previously granted fuel relief to CONTRACTOR's predecessor when similar fuel cost volatility occurred; and

WHEREAS, the proposed fuel relief adjustment contained herein provides a fair and predictable method of accounting for fuel cost volatility and provides for both reimbursement of excessive fuel expenses to CONTRACTOR when fuel prices exceed 15% of the adjusted base fuel index, and credits to CITY when fuel prices drop 15% below the adjusted base fuel index as described herein; and

FIRST AMENDMENT TO SOLID WASTE TRANSPORTATION AND DISPOSAL AGREEMENT
FINLEY-BUTTES LIMITED PARTNERSHIP

2022-203 PAGE 1 OF 4

WHEREAS, the Parties intend to modify the Agreement through this First Amendment to accommodate CONTRACTOR'S requested fuel adjustment;

NOW, THEREFORE, it is agreed, for and in consideration of the mutual covenants and promises between the Parties hereto, as follows:

Section 1. All matters stated above are found to be true and correct and are incorporated herein by reference as if copied in their entirety and shall be adopted with the following sections of this First Amendment.

Section 2. It has been determined that a fair and predictable method of accounting for fuel cost volatility is warranted and is in the best interests of both Parties.

Section 3. CITY shall apply fuel cost adjustments as a payment to CONTRACTOR, or CONTRACTOR will apply the fuel cost adjustment as a credit to CITY, when the index changes as defined below.

1. The index to be used when considering fuel price adjustments pursuant to this First Amendment shall be the U.S. Energy Information Administration (EIA) https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=pet&s=emd_epd2d_pte_r5xca_dpg&f=m, Monthly West Coast (PADD 5) Except California No 2 Diesel Retail Prices (Dollars per Gallon).
2. The Current Fuel Index (CFI) shall be the current month's average price per gallon as reported by EIA as referenced herein. The monthly average CFI, shall be used to compute fuel adjustments for the same month that services are performed for CITY. (i.e. October CFI used to compute fuel adjustment for October services). Fuel adjustments will be calculated by the 15th of the month for the prior month's services, and any payments or credits will be applied to the subsequent month's bill (i.e. September's adjustment will be calculated on October 15th and any payments or credits will be applied to October's billing).
3. Fuel adjustments provided by this First Amendment shall be retroactively effective to January 1, 2022, and shall continue thereafter through the duration of the term of the Agreement.
4. Effective January 1, 2022, the initial base fuel index (BFI) shall be Three Dollars and Thirty-One Cents (\$3.31) per gallon. The BFI shall thereafter be adjusted annually on October 1st of each year beginning October 1, 2022 to establish the Adjusted Base Fuel Index (ABFI) by an amount equal to forty percent (40%) of the annual Consumer Price Index (CPI) as published in January of each year by the United States, Bureau of Labor Statistics (Index I.D. CUUR0000SA0, All Urban Consumers, U.S. All items, 1982-84 = 100) as described herein.

$$ABFI = BFI * (CPI \text{ annual adjustment} * 40\%)$$

Where:

BFI = Base Fuel Index

CPI Annual Adjustment = ((current year annual average CPI - prior year annual average CPI) / prior year annual average CPI)
ABFI = adjusted base fuel index

5. A fuel price adjustment will only be made when the CFI varies by more than fifteen percent (15%) from the ABFI. Payments and credits shall be computed as follows:

Contractor payment if CFI is greater than 115% of ABFI:
 $FPA = (CFI - (ABFI * 115\%)) * Q * T$

City credit if CFI is less than 85% of ABFI:
 $FPA = (CFI - (ABFI * 85\%)) * Q * T$

Where:
FPA = fuel price adjustment
Q = 92.44 gallons per trip
T = monthly trips

Section 4. All other terms and conditions of the Agreement that are not amended by this First Amendment shall remain in full force and effect.

Section 5. This First Amendment was adopted by the City Council of the City of Moscow, Idaho and Approved by the Mayor of the City of Moscow on a regularly scheduled meeting dated November 5, 2022.

IN WITNESS WHEREOF, said CONTRACTOR and CITY have caused this First Amendment to be executed on the day and year first above written.

CONTRACTOR

By: Brian Evola
Brian Evola
Finley-Buttes Limited Partnership



CITY

City of Moscow, Idaho

By: Arthur D. Bettge
Arthur D. Bettge, Mayor

ATTEST

Taylor Riedner
Taylor Riedner, Deputy City Clerk

Approved As To Form:
Mia Bautista
Mia Bautista, City Attorney

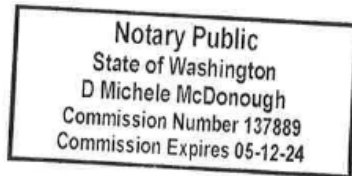
FIRST AMENDMENT TO SOLID WASTE TRANSPORTATION AND DISPOSAL AGREEMENT
FINLEY-BUTTES LIMITED PARTNERSHIP

PAGE 3 OF 4

ACKNOWLEDGMENT

STATE OF Washington
County of Clark) ss:

On this 12th day of December, 2022, before me, a Notary Public in and for said State, appeared Brian Evola, known to me to be the person named above and acknowledged that he executed the foregoing document as the duly authorized representative for Finley-Buttes Limited Partnership.



D. Michele McDonough
Notary Public for State of Washington
Residing at Clark County
My commission expires: 05-12-24

COMMITTEE / CITY COUNCIL STAFF REPORT

DATE: Monday, May 22, 2023



AGENDA ITEM TITLE

Health Insurance Program Amendment Proposal (ACTION ITEM) - Bill Belknap

RESPONSIBLE STAFF

Bill Belknap, City Supervisor

ADDITIONAL PRESENTER(S)

DESCRIPTION

The City of Moscow provides three different health insurance plans for employees to choose from, including the base Preferred Provider Organization (PPO) plan with a \$1,500 individual \$3,000 family deductible, a \$300/\$600 deductible PPO plan where the employee is required to pay the premium cost over the base plan cost, as well as a High Deductible Health Plan (HDHP) with a Health Savings Account (HSA). For many years, the City has paid 50% of the health insurance premiums for dependents that are covered under the City's health insurance program. The City funds 100% of the employee's premium and 50% of their dependent's premium. Recently it has become clear that the City's cost of health insurance for dependents is significantly higher than many of our neighboring entities. The cost of dependent care under the City of Moscow's benefits program is over three times as expensive when compared to the average of CDA, Post Falls, Lewiston, and Pullman. On average, an employee with the City of Moscow will pay \$575 more per month, or \$6,900 more per year, than the average of the comparison cities.

For the nearly 30% of the City's full-time permanent workforce who earn less than \$25 per hour, the employee's insurance cost for a full family would represent over 13% of their gross income. The City Council has identified the inability to recruit sufficient staff to perform essential functions as one of the thirteen most significant challenges facing the community. The City strives to provide a positive and supportive organizational and workplace culture, but in many instances, compensation and associated health insurance benefits are key determinates in employee recruitment and retention. Staff is recommending increasing the dependent premium coverage from 50% to 55% for the upcoming plan year beginning in August of this year. If the City increased dependent care coverage to 55%, City employees with dependents would see an average savings of \$12.38 per month, or a maximum savings of \$23.31 per month for a full family when compared to their current insurance premiums. This is certainly no windfall for City employees and the remaining cost of full family coverage of \$735.14 would still remain nearly double the NWD average cost of \$378 and well above the comparison cities, but it would eliminate the cost increases that employees would otherwise experience. Staff would further recommend committing to reducing this disparity as funding allows, in an incremental manner over the next five years, to bring the City into parity within our labor market and peers.

REVIEWED BY

PROPOSED ACTIONS

PROPOSED ACTIONS: Recommend approval to increase dependent care to 55% for the upcoming 2024 health insurance plan year; or provide staff further direction.

STAFF RECOMMENDATION

Recommend approval to increase dependent care to 55% for the upcoming 2024 health insurance plan year.

OTHER RESOURCES

FISCAL IMPACT

PERSONNEL IMPACT

ATTACHMENTS

1. 2023-05-18 Health Insurance Program Proposal

MEMORANDUM



To: Mayor & Council
From: Bill Belknap, City Supervisor
Date: May 18, 2023
Re: City of Moscow Health Insurance Program Proposal

The City of Moscow provides three different health insurance plans for employees to choose from. The base plan is a Preferred Provider Organization (PPO) plan with a \$1,500 individual \$3,000 family deductible and \$3,500/\$7,000 annual maximum out-of-pocket. The City also provides the same PPO plan with a \$300/\$600 deductible where the employee is required to pay the premium cost over the base plan cost, as well as a High Deductible Health Plan (HDHP) with a Health Savings Account (HSA). For the HSA plan, the City contributes the premium savings the City realizes to the employee's HSA account to be utilized to fund health care costs up to the \$5,000/\$10,000 deductible/maximum out-of-pocket cost.

For many years, the City has paid 50% of the health insurance premiums for dependents that are covered under the City's health insurance program. During a number of recent meetings I have had with City administrators across the state and within the region, it has become clear that the City's cost of health insurance for dependents is significantly higher than many of our neighboring entities. The City is a member of the Northwest Data Exchange (NWD) that collects and shares compensation and health insurance benefit data for a wide range of public entities within the pacific northwest region. Human Resources produced a report from the NWD detailing the health insurance premium amounts, plan deductible, employer and employee cost, and percentage of the premiums paid by both the employee and employer for thirty-nine public agencies within the region. The results of the survey are shown below including a comparison with the anticipated FY2024 health insurance premiums. The data shows that the City's deductible is significantly higher than the survey average and the employee's cost for full family coverage is over double the cost of the survey average.

NWD Survey Averages and Moscow Comparison

	Total Monthly Premium		Employer Cost		Employee Cost		Deductible	
	Single	Family	Single	Family	Single	Family	Single	Family
Survey Average	\$737.46	\$1,971.61	\$710.25	\$1,586.35	\$25.28	\$378.10	\$1,247.44	\$2,361.54
Moscow	\$755.00	\$2,269.10	\$755.00	\$1,512.40	\$0.00	\$816.82	\$1,500.00	\$3,500.00
Variance	\$17.54	\$297.49	\$44.75	-\$73.95	-\$25.28	\$438.72	\$252.56	\$1,138.46

NWD Survey Averages and Moscow Comparison

	Premium Paid by Employer		Premium Paid by Employee	
	Single	Family	Single	Family
Survey Average	96%	79%	4%	21%
Moscow	100%	50%	0%	50%
Variance	4%	-29%	-4%	29%

To provide a more direct comparison, we also surveyed the four closest cities to Moscow including Pullman, Lewiston, Coeur d'Alene, and Post Falls, which represent our closest public agency employers within the region who we are often competing with for employees. It is important to note that Pullman has four different plans, two

of which are 100% funded by the City without any employee contributions. For this comparison, we selected the plan that had the highest employee cost and was most comparable to the City's base \$1,500 deductible plan which is the base benefit provided to employees.

Pullman Health Insurance Plans

	Pullman Asuris 250 \$250/\$750 Deductible	Pullman Asuris HDHP w/HSA \$1,500/\$3,000 Deductible	Pullman Kaiser 200 \$200/400 Deductible
	Employee Cost	Employee Cost	Employee Cost
Employee Only	\$0.00	\$0.00	\$0.00
Employee + Spouse	\$172.35	\$0.00	\$0.00
Employee + 1 Child	\$84.90	\$0.00	\$0.00
Employee + Children	\$155.10	\$0.00	\$0.00
Employee + Spouse + 1 Child	\$257.26	\$0.00	\$0.00
Employee + Spouse + Children	\$327.45	\$0.00	\$0.00
Average	\$166.18	\$0.00	\$0.00

Regional City Comparison

	Coeur d'Alene	Lewiston	Post Falls	Pullman	City of Moscow
	\$1,500/\$3,000 Deductible	\$1,500/\$3,000 Deductible	\$1,000/\$2,000 Deductible	\$250 / \$750 Deductible	\$1,500/\$3,000 Deductible
	Employee Cost	Employee Cost	Employee Cost	Employee Cost	Employee Cost
Employee Only	\$0.00	\$0.00	\$40.00	\$0.00	\$0.00
Employee + Spouse	\$149.47	\$169.74	\$137.28	\$172.35	\$444.70
Employee + 1 Child	\$99.80	\$81.74	\$93.66	\$84.90	\$255.40
Employee + Children	\$113.27	\$129.36	\$112.50	\$155.10	\$370.95
Employee + Spouse + 1 Child	\$169.82	\$251.47	\$165.40	\$257.26	\$701.27
Employee + Spouse + Children	\$169.82	\$299.08	\$165.40	\$327.45	\$816.82

As you can see, the employee cost of dependent care under the City of Moscow's benefits program is between over 200% to almost 500% more expensive than the comparison cities. On average, an employee with the City of Moscow will pay \$575 more per month, or \$6,900 more per year, than the average of the comparison cities. For the nearly 30% of the City's full-time permanent workforce who earn less than \$25 per hour, the employee's insurance cost for a full family would represent over 13% of their gross income.

The University of Idaho is the largest public employer in Moscow and offers both a PPO program as well as a high-deductible health savings (HSA) account option. The University's PPO program has a lower deductible of \$800 individual/\$1,600 family compared to the City's \$1,500 individual/\$3,000 family, but both plans have similar maximum out-of-pocket amounts. The University requires employees to contribute to their individual health insurance premiums whereas the City covers 100% of the employee's premium. However, the employee cost for a full family at the University is significantly lower at \$531 per month compared to the City's amount of \$816 per month at 50% dependent care coverage.

University of Idaho and Moscow Cost Comparison PPO Plans

	City of Moscow PPO \$1,500/\$3,000 Deductible (\$3,500/\$5,000 maximum out of pocket)		University of Idaho PPO \$800/\$1,600 Deductible (\$3,650/\$7,300 maximum out of pocket)	Employee Cost Difference Compared to University of Idaho	
	FY2024 Employee Cost at 50%	FY2024 Employee Cost at 55%	Employee Cost	Difference at 50%	Difference at 55%
Employee Only	\$0.00	\$0.00	\$183.60	-\$183.60	-\$183.60
Employee + Spouse	\$444.70	\$400.23	\$384.40	\$60.30	\$15.83
Employee + 1 Child	\$255.40	\$229.86	\$263.48	-\$8.08	-\$33.62
Employee + Children	\$370.95	\$333.86	\$408.18	-\$37.23	-\$74.33
Employee + Spouse + 1 Child	\$701.27	\$631.14	\$531.30	\$169.97	\$99.84
Employee + Spouse + Children	\$816.82	\$735.14	\$531.30	\$285.52	\$203.84
Average	\$431.52	\$388.37	\$383.71	\$47.81	\$4.66

The University of Idaho and Moscow Cost Comparison HSA Plans

	City of Moscow HSA \$5,000/\$10,000 Deductible (\$5,000/\$10,000 maximum out of pocket)		University of Idaho HSA \$1,900/\$3,800 Deductible (\$3,100/\$6,200 maximum out of pocket)	Employee Cost Difference Compared to University of Idaho	
	FY2024 Employee Cost at 50%	FY2024 Employee Cost at 55%	Employee Cost	Difference at 50%	Difference at 55%
Employee Only	\$0.00	\$0.00	\$102.60	-\$102.60	-\$102.60
Employee + Spouse	\$366.75	\$330.08	\$214.34	\$152.41	\$115.74
Employee + 1 Child	\$213.05	\$191.75	\$150.08	\$62.97	\$41.67
Employee + Children	\$306.95	\$276.26	\$236.50	\$70.45	\$39.76
Employee + Spouse + 1 Child	\$580.97	\$522.87	\$302.92	\$278.05	\$219.95
Employee + Spouse + Children	\$674.87	\$607.38	\$302.92	\$371.95	\$304.46
Average	\$357.10	\$321.39	\$218.23	\$138.87	\$103.16

The City recently received the FY2024 insurance premium renewal rates for each of the City's three insurance programs including the \$300 and \$1,500 deductible PPO plans as well as the City's HSA plan. The \$300 PPO plan will experience a 12.2% increase, the \$1,500 PPO plan will experience a 7.94% increase and the HSA plan will see a 4.17% increase. The resulting employee cost increases are shown below. On average under the \$1,500 PPO base plan, employees will see an average increase of \$27.70 per month and a full family will see an increased cost of \$52.54 per month. Employees choosing to pay for the lower deductible \$300 PPO plan will see an average increased cost of \$98.61 per month and a full family will see an increased cost of \$156.44 per month.

Employee Cost Increases at 50% Dependent Coverage

Increase Under 50% Dependent Coverage Contribution											
	\$300 PPO Employee Increase				\$1,500 PPO Employee Increase				HSA Employee Increase		
Employee Cost Increase	% Change	Monthly	Annual		% Change	Monthly	Annual		% Change	Monthly	Annual
Employee Only	88%	\$ 34.60	\$ 415.20		0.0%	\$ -	\$ -		0	\$ -	\$ -
Employee + Spouse	22%	\$ 101.32	\$ 1,215.84		7.7%	\$ 28.62	\$ 343.44		4.2%	\$ 13.28	\$ 159.30
Employee + 1 Child	26%	\$ 71.44	\$ 857.34		7.6%	\$ 16.24	\$ 194.94		4.3%	\$ 7.88	\$ 94.50
Employee + Children	23%	\$ 89.69	\$ 1,076.34		7.7%	\$ 23.89	\$ 286.74		4.3%	\$ 11.30	\$ 135.54
Employee + Spouse + 1 Child	20%	\$ 138.19	\$ 1,658.25		7.7%	\$ 44.89	\$ 538.65		4.2%	\$ 21.17	\$ 254.07
Employee + Spouse + Children	20%	\$ 156.44	\$ 1,877.25		7.7%	\$ 52.54	\$ 630.45		4.2%	\$ 24.59	\$ 295.11
	Average	\$ 98.61	\$ 1,183.37		Average	\$ 27.70	\$ 332.37		Average	\$ 13.04	\$ 156.42

The City Council has identified the *inability to recruit sufficient staff to perform essential functions* as one of the thirteen most significant challenges facing the community. The City strives to provide a positive and supportive organizational and workplace culture, but in many instances, compensation and associated health insurance benefits are key determinates in employee recruitment and retention. As you may be aware, the City generally utilizes the Consumer Price Index (CPI) from the preceding year as a guide in determining the cost of living increases for City employees each year. For 2022, the annual average CPI was 8%. Each 1% of the cost of living increase represents approximately \$150,000 in additional expense to the City. Given the City's financial constraints, the potential for an upcoming recession, and declining sales tax revenues, it is not possible for the City to fund the \$1.2 million it would take to provide the full 8% cost of living increase. Currently, the draft budget for FY2024 includes a 4% cost of living increase.

In FY2023, the City budgeted \$2.2 million for health insurance benefits for City employees across all funds. I have evaluated the cost of increasing the City's dependent cost coverage from the current 50% to 55%. Across all funds, increasing the dependent care coverage to 55% would cost approximately \$53,377 across all City funds. This would represent a modest 2.4% increase in the City's health insurance cost and is currently included within the draft proposed FY2024 budget which the Council will review during the upcoming July 18th budget workshop.

If the City increased the dependent care coverage to 55%, City employees with dependents would see an average savings of \$12.38 per month, or a maximum savings of \$23.31 per month for a full family as shown below. This is certainly no windfall for City employees and the remaining cost of full family coverage of \$735.14 would still remain nearly double the NWD average cost of \$378 and well above the comparison cities, but it would eliminate the cost increases that employees would otherwise experience and help compensate for not being able to provide the full cost of living increase. The large cost gap will remain between the City and our peers and I would encourage the Mayor and Council to commit to reducing this disparity as funding allows in an incremental manner over the next five years to bring the City into parity within our labor market.

Employee Cost Increases at 55% Dependent Coverage

Increase Under 55% Dependent Coverage Contribution											
	\$300 PPO Employee Increase				\$1,500 PPO Employee Increase				HSA Employee Increase		
Employee Cost Increase	% Change	Monthly	Annual		% Change	Monthly	Annual		% Change	Monthly	Annual
Employee Only	88%	\$ 34.60	\$ 415.20		0.0%	\$ -	\$ -		0	\$ -	\$ -
Employee + Spouse	12%	\$ 60.03	\$ 720.36		-3.1%	\$ (12.67)	\$ (152.04)		-6.2%	\$ (21.93)	\$ (263.10)
Employee + 1 Child	16%	\$ 47.71	\$ 572.52		-3.2%	\$ (7.49)	\$ (89.88)		-6.1%	\$ (12.55)	\$ (150.66)
Employee + Children	13%	\$ 55.25	\$ 663.06		-3.1%	\$ (10.55)	\$ (126.54)		-6.2%	\$ (18.15)	\$ (217.74)
Employee + Spouse + 1 Child	10%	\$ 73.05	\$ 876.58		-3.1%	\$ (20.25)	\$ (243.02)		-6.2%	\$ (34.57)	\$ (414.86)
Employee + Spouse + Children	9%	\$ 80.59	\$ 967.12		-3.1%	\$ (23.31)	\$ (279.68)		-6.2%	\$ (40.16)	\$ (481.94)
	Average	\$ 58.54	\$ 702.47		Average	\$ (12.38)	\$ (148.53)		Average	\$ (21.23)	\$ (254.72)